PB-230 369

REFUSE ACT PERMIT PROGRAM, OPERATING MANUAL

Environmental Protection Agency

1 August 1971

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5285 Port Royal Road, Springfield Va. 22151

PB 230 369

REFUSE ACT

PERMIT PROGRAM

CLEAN WATER

Operating Manual

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Springfield VA 22151

ENVIRONMENTAL PROTECTION AGENCY

FOREWORD

This manual prescribes policies and procedures and serves as an operating guide for EPA regional personnel who must conduct the Corps of Engineers Refuse Act Permit Program.

The manual begins with an explanation of the derivation and general design of the Program. The manual then breaks the Program down into five major phases:

Chapter 200 Policy

Chapter 300 Processing of application

Chapter 400 Data management

Chapter 500 Public involvement

Chapter 600 Review procedure

The rest of the manual is comprised of reference materials.

Parts of this manual may be replaced, supplemented, or modified from time to time. Submit any requests for clarification or expansion to the Office of Refuse Act Programs.

Reproduced from best available copy.

August 1, 1971

121

OPERATING MANUAL
REFUSE ACT PERMIT PROGRAM
TABLE OF CONTENTS

Foreword

Chapter 100 Laws and Regulations Regarding the Permit Program

101 General Description of Permit Program Sanctions

102 Text of Sections 9-20 of the River and Harbor Act of 1899

103 Text of Section 21(b) of the Federal Water Pollution Control Act (PL 91-224)

104 Text of the National Environmental Policy Act of 1969

Chapter 200 Policy

201 General Policies Regarding Permit Processing

Chapter 300 Processing of Application

301 State Certification, Waiver, or Denial

302 Priorities for Permit Processing

303 Interagency Procedures

304 COE -- EPA Contact

305 Use of General Conditions

306 Use of Special Conditions

307 Period of the Permit

308 Consultation on Technical Matters

309 Request for Additional Information

310 Communications With Headquarters

311 Protection of Confidential Answers

312 Hazardous Substances

313 Fish and Wildlife Impact

314 Potentially Critical Industries

Chapter 400 Data Management

401 Structure of Management Information System

402 MICS Report/PATF Legend Glossary

Chapter 500 Public Involvement

501 Public Notice

502 Public Hearing

503 Public Disclosure

504 Public Contribution of Evidence

Chapter 600 Review Procedures

601 Interstate

602 Intrastate

603 Federally Approved Standards

604 Implementation Plans

Chapter 700 Forms

701 Application Form and Instruction Book

702 Permit Form with General Conditions

703 Form Letters

704 "A Program for Clean Waters"

705 Uses of the Permit Application Transmittal Form

Chapter 800 Index and Glossary

Chapter 900 Appendices

901 Corps of Engineers Regulations of April 7, 1971

902 EPA Regulations of May 8, 1971

903 Memorandum of Understanding -- Implementation

904 Memorandum of Understanding -- Enforcement

905 Department of Justice Guidelines

V.

August 1, 1971

Chapter 100

Laws and Regulations Regarding the Permit Program

101 General Description of Permit Program Sanctions

On December 23, 1970, President Nixon issued Executive Order 11574 initiating the Permit Program under the Refuse Act of 1899. The purpose of the Order was to make the most effective use of this Act and other existing Federal legislation to achieve compliance with water quality standards. What follows is an overall program description, drawn from the provisions of the Refuse Act, Section 21(b) of the Water Quality Improvement Act of 1970, the National Environmental Policy Act, and the regulations and memoranda issued by EPA and the Corps of Engineers.

Refuse Act

Section 13 of the River and Harbor Act of 1899, otherwise known as the "Refuse Act," makes it unlawful to discharge refuse into navigable waters or their tributaries without a permit from the Army through the Corps of Engineers. Section 16 of the River and Harbor Act makes knowing violation of the Refuse Act a misdemeanor. Violators are subject to imprisonment and/or fines, and also are subject to injunctive action.

Although permits have been regularly issued under Section 10 of the River and Harbor Act, which deals with obstructions to navigation, the authority of Section 13, the Refuse Act, to require permits has not previously been used.

In the past few years, the potential of the Refuse Act as an anti-pollution tool has been recognized and used by the Supreme Court, notably in its decisions regarding U.S. vs. Republic Steel (1960) and U.S vs. Standard Oil Company (1966)

Section 21(b) of the Federal Water Pollution Control Act

This amendment, also known as the Water Quality Improvement Act of 1970, states that no Federal agency may issue a permit to conduct an activity which might affect water quality, unless the State or other appropriate agency has certified that there is reasonable assurance that the activity will not violate water quality standards. The Corps of Engineers must obtain this certification before issuing the discharge permit required by the Refuse Act of 1899, unless the State waives its right in accordance with Section 21(b)(1) of the Federal Water Pollution Control Act.

EPA will become involved when no water quality standards exist, when existent standards are inadequate to protect fish and wildlife, when standards are not correctly interpreted, when any hazardous substance is involved, or when the activity may affect interstate waterways. EPA also retains the right to review and comment on all State certifications. In addition, we may testify at any public hearing called to hear objections to the issuance of a permit.

Facilities for which construction lawfully began prior to April 3, 1970 are temporarily exempted from the requirement for State certification (See Section 21(b)(7) of the Federal Water Pollution Control Act), but must instead secure a letter of State approval. If the facility's discharges do not endanger water quality standards, the Corps will issue a Refuse Act Permit, valid through April 2, 1973. The State's formal certification will be required before the permit is renewed.

Memoranda of Understanding

The Memo of Understanding between EPA and the Corps concerning implementation of the Refuse Act Permit Program established a policy of cooperation between the two agencies. The section on "Procedures" outlines the major responsibilities of each agency for the Permit Program. In conformance with the Corps' operating Regulations, the Memo provides that EPA and the Corps shall consult with one another at least 30 days before either issues guidelines, instructions, policies or procedures.

The Memorandum of Understanding provides a mechanism for the resolution of differences between Corps and EPA Regional personnel on matters of water quality. Disputes will be forwarded to Headquarters, and the Secretary of the Army and the Administrator of EPA will consult; the Secretary shall accept the Administrator's findings.

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The Memorandum of Understanding establishing policies and procedures for enforcement of the Refuse Act states that pursuant to the Federal Water Pollution Control Act, EPA has primary responsibility for the abatement and control of pollution of interstate and navigable waters of the United States. The Department of the Army is responsible for the enforcement of the Refuse Act. Together they will develop regulations and procedures regarding the granting, denial, conditioning, revocation and suspension of the Refust Act permits.

Where conditioning or threat of suspension of the permit is not sufficient to enforce water quality standards, the Justice Department may be asked to institute either civil proceedings, i.e., injunctive

action, or criminal sanctions, which can involve a fine of up to $2,500 per violation per day, and/or imprisonment of up to a year.

Whenever a District Engineer suspects the incidence of a discharge damaging to water quality, he must notify the EPA Regional Representative, who will investigate and report to the Engineer his findings on the potential danger of the discharge and his recommendations for action. Likewise, the Engineer shall report any violations of permit suspension to the EPA Representative for his investigation and recommendations. When it appears that legal action is necessary, either the Regional Representative or the District Engineer may, after consultation with the other, forward the evidence and recommendations of both agencies to the appropriate United States Attorney.

The National Environmental Policy Act of 1969

This Act sets out broad policies and goals to provide for the best management of the environment. Toward this end, it established the Council on Environmental Quality, a three-man group appointed by the President. The Council shall appraise and coordinate the regulations, policies, and procedures of the various Federal agencies with respect to the Refuse Act Permit Program. It shall also assist the President in preparing the annual report on the environment.

In addition, this act states that all Federal agencies shall include, in every proposal for actions which significantly affect the environment, a statement predicting the resulting impact on the environment, as well as possible alternatives to the proposed action. Potentially irreversible and irretrievable commitment of resources should be

particularly noted. Before preparing such a statement, the agency is required to consult with any Federal agencies having expertise or jurisdiction on the particular aspect of the environment in question. Thus, the Corps of Engineers must consult with EPA before preparing an impact statement.

The Council has framed a set of guidelines for the preparation of impact statements. These guidelines point out that permit activities do not require the preparation of impact statement when (a) water quality is the only environmental factor involved and (b) a 21(b) certification has been received. In those cases referral to the certification is all that is required.

RIVER AND HARBOR ACT OF 1899

(Sections 9–20)

CHAP. 425.—An Act Making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes.

Mar. 3, 1899.
Vol. 30, p. 1121.

* * * * * * *

Congress to authorize construction of bridges over navigable waters.
—approval of plans.
Vol. 26, p. 454; vol. 27, p. 110; vol. 32, p. 374.
Ante, pp. 582, 642; *post*, p. 1009.

SEC. 9. That it shall not be lawful to construct or commence the construction of any bridge, dam, dike, or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of War: *Provided*, That such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced: *And provided further*, That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War.

Provisos.
Legislatures to authorize on waters wholly within State.

Deviation from plans.

No obstruction to navigation not authorized.
Works outside harbor lines forbidden.
Vols. 25, p. 423; 26, p. 454; 27, p. 110.
Ante, pp. 515, 583, 642.

SEC. 10. That the creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is hereby prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of ref-

Excavations, alterations, etc., in channels only where authorized.

6<

May 1, 1971
102-1

uge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same.

Establishment of harbor lines. Vol. 24, p. 329; vol. 25, p. 425; vol. 26, p. 455. *Ante*, pp. 462, 518, 584.

SEC. 11. That where it is made manifest to the Secretary of War that the establishment of harbor lines is essential to the preservation and protection of harbors he may, and is hereby, authorized to cause such lines to be established, beyond which no piers, wharves, bulkheads, or other works shall be extended or deposits made, except under such regulations as may be prescribed from time to time by him: *Provided*, That whenever the Secretary of War grants to any person or persons permission to extend piers, wharves, bulkheads, or other works, or to make deposits in any tidal harbor or river of the United States beyond any harbor lines established under authority of the United States, he shall cause to be ascertained the amount of tide water displaced by any such structure or by any such deposits, and he shall, if he deem it necessary, require the parties to whom the permission is given to make compensation for such displacement either by excavating in some part of the harbor, including tidewater channels between high and low water mark, to such an extent as to create a basin for as much tide water as may be displaced by such structure or by such deposits, or in any other mode that may be satisfactory to him.

Proviso. Compensation for tide water displaced.

Penalties; removal of structures. Vol. 26, p. 454. *Ante*, p. 583. Vol. 31, p. 32. *Post*, p. 906.

SEC. 12. That every person and every corporation that shall violate any of the provisions of sections nine, ten, and eleven of this Act, or any rule or regulation made by the Secretary of War in pursuance of the provisions of the said section fourteen, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any circuit court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney-General of the United States.

Depositing refuse in navigable waters forbidden. Vol. 26, p. 453; vol. 28, p. 363. *Ante*, pp. 581, 712.

SEC. 13. That it shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers

and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided*, That nothing herein contained shall extend to, apply to, or prohibit the operations in connection with the improvement of navigable waters or construction of public works, considered necessary and proper by the United States officers supervising such improvement or public work: *And provided further*, That the Secretary of War, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful.

Provisos.
—not applicable to public works.

—permits for depositing in defined limits.

SEC. 14. That it shall not be lawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works: *Provided*, That the Secretary of War may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest.

Using, etc., wharves, levees, etc., forbidden. Vol. 26, p. 454; vol. 28, p. 363. *Ante*, pp. 583, 712.

Proviso.
—permits for temporary use.

SEC. 15. That it shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as sack rafts of timber and logs in

Obstructions by anchoring vessels.

—sunken vessels, timber, etc.

streams or channels actually navigated by steamboats in such manners as to obstruct, impede, or endanger navigation. And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidentally or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner so to do shall be unlawful; and it shall be the duty of the owner of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States as hereinafter provided for.

Vol. 31, pp. 172.
Post, p. 908.
—duties of owner of sunken vessel.

Penalties.

SEC. 16. That every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize, or instigate a violation of the provisions of sections thirteen, fourteen, and fifteen of this Act shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court; one-half of said fine to be paid to the person or persons giving information which shall lead to conviction. And any and every master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel who shall knowingly engage in towing any scow, boat, or vessel loaded with any material specified in section thirteen of this Act to any point or place of deposit or discharge in any harbor or navigable water, elsewhere than within the limits defined and permitted by the Secretary of War, or who shall willfully injure or destroy any work of the United States contemplated in section fourteen of this Act, or who shall willfully obstruct the channel of any waterway in the manner contemplated in section fifteen of this Act, shall be deemed guilty of a violation of this Act, and shall upon conviction be punished as hereinbefore provided in this section, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. And any boat, vessel, scow, raft, or other craft used or employed in violating any of the provisions of sections thirteen, fourteen, and fifteen of this Act shall be liable for the pecuniary penalties specified in this section, and in addition thereto for the amount of the damages done by said boat, vessel, scow, raft, or other craft, which latter sum shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred, and said boat, vessel, scow, raft, or other craft may be

proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof.

Legal proceedings, by whom conducted, etc. Vol. 26, p. 455. *Ante*, p. 584.

SEC. 17. That the Department of Justice shall conduct the legal proceedings necessary to enforce the foregoing provisions of sections nine to sixteen, inclusive, of this Act; and it shall be the duty of district attorneys of the United States to vigorously prosecute all offenders against the same whenever requested to do so by the Secretary of War or by any of the officials hereinafter designated, and it shall furthermore be the duty of said district attorneys to report to the Attorney-General of the United States the action taken by him against offenders so reported, and a transcript of such reports shall be transmitted to the Secretary of War by the Attorney-General; and for the better enforcement of the said provisions and to facilitate the detection and bringing to punishment of such offenders, the officers and agents of the United States in charge of river and harbor improvements, and the assistant engineers and inspectors employed under them by authority of the Secretary of War, and the United States collectors of customs and other revenue officers, shall have power and authority to swear out process and to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by the aforesaid sections of this Act, or who may violate any of the provisions of the same: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of some one of the aforesaid officials: *And provided further*, That whenever any arrest is made under the provisions of this Act, the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States.

Power to arrest granted certain officials.

Provisos. —offense to be committed in presence of.

—examination of prisoner.

Obstruction to navigation by bridges. Vols. 23, p. 148; 25, pp. 425, 425; 26, p. 453. *Ante*, pp. 417, 517, 580.

SEC. 18. That whenever the Secretary of War shall have good reason to believe that any railroad or other bridge now constructed, or which may hereafter be constructed, over any of the navigable waterways of the United States is an unreasonable obstruction to the free navigation of such waters on account of insufficient height, width of span, or otherwise, or where there is difficulty in passing the draw opening or the draw span of such bridge by rafts, steamboats, or other water craft, it shall be the duty of the said Secretary, first giving the parties reasonable opportunity to be heard, to give notice to the persons or corporations owning or controlling such bridge so to alter the same as to render navigation through or under it reasonably free, easy, and unobstructed; and in giving such notice he shall specify the changes recommended by

—notice to alter.

44-674 O—70——10

the Chief of Engineers that are required to be made, and shall prescribe in each case a reasonable time in which to make them. If at the end of such time the alteration has not been made, the Secretary of War shall forthwith notify the United States district attorney for the district in which such bridge is situated, to the end that the criminal proceedings hereinafter mentioned may be taken. If the persons, corporation, or association owning or controlling any railroad or other bridge shall, after receiving notice to that effect, as hereinbefore required, from the Secretary of War, and within the time prescribed by him willfully fail or refuse to remove the same or to comply with the lawful order of the Secretary of War in the premises, such persons, corporation, or association shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, and every month such persons, corporation, or association shall remain in default in respect to the removal or alteration of such bridge shall be deemed a new offense, and subject the persons, corporation, or association so offending to the penalties above prescribed: *Provided*, That in any case arising under the provisions of this section an appeal or writ of error may be taken from the district courts or from the existing circuit courts direct to the Supreme Court either by the United States or by the defendants.

—penalty.

Proviso. —appeal.

Removal of obstructions to navigation. Vol. 21, p. 197; vol. 22, p. 208; vol. 26, p. 454. *Ante*, pp. 330, 383, 583.

SEC. 19. That whenever the navigation of any river, lake, harbor, sound, bay, canal, or other navigable waters of the United States shall be obstructed or endangered by any sunken vessel, boat, water craft, raft, or other similar obstruction, and such obstruction has existed for a longer period than thirty days, or whenever the abandonment of such obstruction can be legally established in a less space of time, the sunken vessel, boat, water craft, raft, or other obstruction shall be subject to be broken up, removed, sold, or otherwise disposed of by the Secretary of War at his discretion, without liability for any damage to the owners of the same: *Provided*, That in his discretion, the Secretary of War may cause reasonable notice of such obstruction of not less than thirty days, unless the legal abandonment of the obstruction can be established in a less time, to be given by publication, addressed "To whom it may concern," in a newspaper published nearest to the locality of the obstruction, requiring the removal thereof: *And provided also*, That the Secretary of War may, in his discretion, at or after the time of giving such notice, cause sealed proposals to be solicited by public advertisement, giving reasonable notice of not less than ten days, for the removal of such obstruction as soon as possible after the expiration of the above specified thirty days' notice, in case it has not in the meantime been so removed, these proposals and contracts, at his discretion, to be conditioned that such vessel, boat, water craft, raft, or other

Provisos. —notice.

—proposals to remove.

obstruction, and all cargo and property contained therein, shall become the property of the contractor, and the contract shall be awarded to the bidder making the proposition most advantageous to the United States: *Provided*, That such bidder shall give satisfactory security to execute the work: *Provided further*, That any money received from the sale of any such wreck, or from any contractor for the removal of wrecks, under this paragraph shall be covered into the Treasury of the United States.

—bond of bidder.

Disposition of funds from sale of wrecks.

Vessels grounding, etc.

SEC. 20. That under emergency, in the case of any vessel, boat, water craft, or raft, or other similar obstruction, sinking or grounding, or being unnecessarily delayed in any Government canal or lock, or in any navigable waters mentioned in section nineteen, in such manner as to stop, seriously interfere with, or specially endanger navigation, in the opinion of the Secretary of War, or any agent of the United States to whom the Secretary may delegate proper authority, the Secretary of War or any such agent shall have the right to take immediate possession of such boat, vessel, or other water craft, or raft, so far as to remove or to destroy it and to clear immediately the canal, lock, or navigable waters aforesaid of the obstruction thereby caused, using his best judgment to prevent any unnecessary injury; and no one shall interfere with or prevent such removal or destruction: *Provided*, That the officer or agent charged with the removal or destruction of an obstruction under this section may in his discretion give notice in writing to the owners of any such obstruction requiring them to remove it: *And provided further*, That the expense of removing any such obstruction as aforesaid shall be a charge against such craft and cargo; and if the owners thereof fail or refuse to reimburse the United States for such expense within thirty days after notification, then the officer or agent aforesaid may sell the craft or cargo, or any part thereof that may not have been destroyed in removal, and the proceeds of such sale shall be covered into the Treasury of the United States.

—destruction, etc., of.

Provisos.

—notice.

—expense of removal.

—reimbursement.

12<

May 1, 1971
102-7

Section 103

Text of Section 21(b) of the Federal Water

Pollution Control Act (PL 91-224)

strate methods to provide for central community facilities for safe water and elimination or control of water pollution in those native villages of Alaska without such facilities. Such project shall include provisions for community safe water supply systems, toilets, bathing and laundry facilities, sewage disposal facilities, and other similar facilities, and educational and informational facilities and programs relating to health and hygiene. Such demonstration projects shall be for the further purpose of developing preliminary plans for providing such safe water and such elimination or control of water pollution for all native villages in such State.

(b) In carrying out this section the Secretary shall cooperate with the Secretary of Health, Education, and Welfare for the purpose of utilizing such of the personnel and facilities of that Department as may be appropriate.

(c) The Secretary shall report to Congress not later than January 31, 1973, the results of the demonstration projects authorized by this section together with his recommendations, including any necessary legislation, relating to the establishment of a statewide program.

(d) There is authorized to be appropriated not to exceed $1,000,000 to carry out this section.

COOPERATION BY ALL FEDERAL AGENCIES IN THE CONTROL OF POLLUTION [52]

SEC. 21. (a) Each Federal agency (which term is used in this section includes Federal departments, agencies, and instrumentalities) having jurisdiction over any real property or facility, or engaged in any Federal public works activity of any kind, shall, consistent with the paramount interest of the United States as determined by the President, insure compliance with applicable water quality standards and the purposes of this Act in the administration of such property, facility, or activity. In his summary of any conference pursuant to section 10(d)(4) of this Act, the Secretary shall include references to any discharges allegedly contributing to pollution from any such Federal property, facility, or activity, and shall transmit a copy of such summary to the head of the Federal agency having jurisdiction of such property, facility, or activity. Notice of any hearing pursuant to section 10(f) of this Act involving any pollution alleged to be effected by any such discharges shall also be given to the Federal agency having jurisdiction over the property, facility, or activity involved, and the findings and recommendations of the hearing board conducting such hearing shall include references to any such discharges which are contributing to the pollution found by such board.

(b)(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities which may result in any discharge into the navigable waters of the United States, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that there is

[52] Amended by sec. 103, Public Law 91-224.

reasonable assurance, as determined by the State or interstate agency that such activity will be conducted in a manner which will not violate applicable water quality standards. Such state or interstate agency shall establish procedures for public notice in the case of all applications for certification by it, and to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where such standards have been promulgated by the Secretary pursuant to section 10(c) of this Act, or where a State or interstate agency has no authority to give such a certification, such certification shall be from the Secretary. If the State, interstate agency, or Secretary, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Secretary, as the case may be.

(2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Secretary of such application and certification. Whenever such a discharge may affect, as determined by the Secretary, the quality of the waters of any other State, the Secretary within thirty days of the date of notice of application for such Federal license or permit shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate its water quality standards, and within such sixty-day period notifies the Secretary and the licensing of permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Secretary shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Secretary, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary to insure compliance with applicable water quality standards. If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit.

(3) The certification obtained pursuant to paragraph (1) of this subsection with respect to the construction of any facility shall fulfill the requirements of this subsection with respect to certification in connection with any other Federal license or permit required for the operation of such facility unless, after notice to the certifying State, agency, or Secretary, as the case may be, which shall be given by the Federal agency to whom application is made for such operating license or permit, the State, or if appropriate, the interstate agency or the Secretary, notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with applicable water quality standards because of changes

since the construction license or permit certification was issued in (A) the construction or operation of the facility, (B) the characteristics of the waters into which such discharge is made, or (C) the water quality standards applicable to such waters. This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or if appropriate, the interstate agency or the Secretary, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted which changes may result in violation of applicable water quality standards.

(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters of the United States and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection, which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide an opportunity for such certifying State, or if appropriate, the interstate agency or the Secretary to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable water quality standards will not be violated. Upon notification by the certifying State, or if appropriate, the interstate agency or the Secretary that the operation of any such federally licensed or permitted facility or activity will violate applicable water quality standards, such Federal agency may, after public hearing, suspend such license or permit. If such license or permit is suspended, it shall remain suspended until notification is received from the certifying State, agency, or Secretary, as the case may be, that there is reasonable assurance that such facility or activity will not violate applicable water quality standards.

(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under section 10(h) of this Act that such facility or activity has been operated in violation of applicable water quality standards.

(6) No Federal agency shall be deemed to be an applicant for the purposes of this subsection.

(7) In any case where actual construction of a facility has been lawfully commenced prior to the date of enactment of the Water Quality Improvement Act of 1970, no certification shall be required under this subsection for a license or permit issued after the date of enactment of such Act of 1970 to operate such facility, except that any such license or permit issued without certification shall terminate at the end of the three-year period beginning on the date of enactment of such Act of 1970 unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this subsection.

(8) Except as provided in paragraph (7), any application for a license or permit (A) that is pending on the date of enactment of the Water Quality Improvement Act of 1970 and (B) that is issued within one year following such date of enactment shall not require certification pursuant to this subsection for one year following the issuance of such

license or permit, except that any such license or permit issued shall terminate at the end of one year unless prior to that time the licensee or permittee submits to the Federal agency that issued such license or permit a certification and otherwise meets the requirements of this subsection.

(9) (A) In the case of any activity which will affect water quality but for which there are no applicable water quality standards, no certification shall be required under this subsection, except that the licensing or permitting agency shall impose, as a condition of any license or permit, a requirement that the licensee or permittee shall comply with the purposes of this Act.

(B) Upon notice from the State in which the discharge originates or, as appropriate, the interstate agency or the Secretary, that such licensee or permittee has been notified of the adoption of water quality standards applicable to such activity and has failed, after reasonable notice, of not less than six months, to comply with such standards, the license or permit shall be suspended until notification is received from such State or interstate agency or the Secretary that there is reasonable assurance that such activity will comply with applicable water quality standards.

(c) Nothing in this section shall be construed to limit the authority of any department or agency pursuant to any other provision of law to require compliance with applicable water quality standards. The Secretary shall, upon the request of any Federal department or agency, or State or interstate agency, or applicant, provide, for the purpose of this section, any relevant information on applicable water quality standards, and shall, when requested by any such department or agency or State or interstate agency, or applicant, comment on any methods to comply with such standards.

(d) In order to implement the provisions of this section, the Secretary of the Army, acting through the Chief of Engineers, is authorized, if he deems it to be in the public interest, to permit the use of spoil disposal areas under his jurisdiction by Federal licensees or permittees, and to make an appropriate charge for such use. Moneys received from such licensees or permittees shall be deposited in the Treasury as miscellaneous receipts.

ADMINISTRATION [53]

SEC. 22. (a) The Secretary is authorized to prescribe such regulations as are necessary to carry out his functions under this Act.

(b) The Secretary, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as may be found necessary to assist in carrying out the purposes of this Act.

(c) There are hereby authorized to be appropriated to the Department of the Interior such sums as may be necessary to enable it to carry out its functions under this Act.

(d) Each recipient of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds

[53] This section renumbered by sec. 102, Public Law 91-224.

Public Law 91-190
91st Congress, S. 1075
January 1, 1970

An Act

83 STAT. 852

To establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969". National Environmental Policy Act of 1969.

PURPOSE

SEC. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

SEC. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. Policies and goals.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Administration.

SEC. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

Copies of statements, etc., availability.

81 Stat. 54.

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality established by title II of this Act.

Review. SEC. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

SEC. 104. Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

SEC. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Report to Congress. SEC. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Council on Environmental Quality. SEC. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

SEC. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

80 Stat. 416.

Duties and functions.

SEC. 204. It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

SEC. 205. In exercising its powers, functions, and duties under this Act, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

34 F. R. 8693.

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

SEC. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV or the Executive Schedule Pay Rates (5 U.S.C. 5315). Tenure and compensation. 80 Stat. 460, 461. 81 Stat. 638.

SEC. 207. There are authorized to be appropriated to carry out the provisions of this Act not to exceed $500,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter. Appropriations.

Approved January 1, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-378, 91-378, pt. 2, accompanying H. R. 12549 (Comm. on Merchant Marine & Fisheries) and 91-765 (Comm. of Conference).
SENATE REPORT No. 91-296 (Comm. on Interior & Insular Affairs).
CONGRESSIONAL RECORD, Vol. 115 (1969):
July 10: Considered and passed Senate.
Sept.23: Considered and passed House, amended, in lieu of H. R. 12549.
Oct. 8: Senate disagreed to House amendments; agreed to conference.
Dec. 20: Senate agreed to conference report.
Dec. 22: House agreed to conference report.

GPO 37-139

Chapter 200

Policy

201 General Policies regarding Permit Processing

The following statements of Agency policy regarding the processing of applications for Refuse Act discharge permits are issued for the guidance of EPA regional offices in carrying out their responsibilities under the Refuse Act Permit Program. These statements of policy may be revised or supplemented from time to time as the need arises.

I. EPA RELATIONS WITH THE STATES

A. General

1. Recognizing that primary responsibilities and rights in preventing and controlling water pollution belong to the States, Section 21(b) of the FWPC Act, as amended, and Corps of Engineers regulations have given the States an opportunity to certify or comment with respect to discharges which may affect water quality.

2. EPA has been assigned the role of advising the Corps as to the impact of the proposed discharge on water quality. In furtherance of the full State participation in the permit program and to avoid duplication, EPA's formulation of its recommendations to the Corps will, in general, give great weight to the expressed views of the States as given in the State certification or comment.

3. EPA will maintain constant communication with each State, work out procedures with each State to ensure that the permit program is compatible with existing State programs, cooperate with each State and support any State whose resources are limited, and attempt to resolve differences wherever possible.

B. State Certification or Comment

1. Any facility covered by Section 21(b) in existence or under construction prior to April 3, 1970, (hereinafter referred to as "existing facility") is not required to obtain certification in order to be issued a permit. Any permit issued for such facility without certification, however, will terminate April 2, 1973, unless, prior to April 3, 1973, the permittee submits such certification to the Corps.

2. Any facility or activity which results in a discharge into a nonnavigable tributary to navigable waters is not required to obtain certification.

3. Corps regulations provide, however, that existing facilities and facilities discharging into non-navigable tributaries which do not present

certification are required to obtain a "written communication" from the State (herein referred to as a State "comment") "describing the impact of the proposed discharge or deposit and indicating the views of the State on the desirability of granting a permit."

4. Where there are no "applicable water quality standards" (herein refers to Federal-State water quality standards adopted pursuant to section 10(c) of the FWPC Act or State-adopted water quality standards for navigable waters which are not interstate waters), certification is not required by Section 21(b) and comment is not required by the Corps regulations. Nevertheless, EPA will solicit State comment on applications for discharges to which no water quality standards apply.

5. Even if an applicant is not required by Section 21(b) to obtain certification, he may voluntarily apply for such certification for his Refuse Act permit. A State requested to comment upon an application may choose to certify with respect to the discharge described in the application. In both cases, such certification will have the same effect as that granted to an applicant required to obtain certification.

C. EPA Review of State Certification or Comment

1. If an applicant is required to apply for certification and the State denies certification, the Corps must deny the permit.

2. In considering recommendations to be made to the Corps, EPA will, in general, give the same weight and respect to State comments as to State certification decisions, except that an unfavorable State comment will not require an automatic denial of a permit.

3. With respect to discharges into **interstate** waters, EPA can override a State recommendation (other than a denial of certification) in any case where the discharge will not meet Federal-State water quality standards and related water quality considerations.

4. With respect to discharges into **intrastate** waters, EPA can override a State recommendation (other than a denial of certification) and require the establishment and application of appropriate Federal standards where:

(a) the discharge contains oil or hazardous or toxic materials;

(b) fish and wildlife or their habitats are not adequately protected;

(c) applicable State standards contain loopholes or are so weak as to be inconsistent with the purposes of the FWPC Act; or

(d) there are no applicable water quality standards.

II. VIOLATIONS OF WATER QUALITY STANDARDS - GENERAL

A. The violation of water quality criteria by a discharge will lead to the specification of special conditions in the permit. The degree of the violation will determine the number and the kind of conditions imposed.

B. The violation of an implementation plan by an applicant will bear on the decision to grant or deny the permit. A serious violation (defined more exactly in the section entitled "Use of Implementation Plans in Permit Processing"; generally, a situation where the applicant is substantially behind schedule) is sufficient grounds for denial of the permit.

III. USE OF WATER QUALITY CRITERIA IN PERMIT PROCESSING

A. A permit normally will be issued if the discharge described in the application does not violate applicable water quality criteria and if the discharge is subject to certain minimum levels of treatment or control.

B. A permit may be issued even if the discharge violates applicable water quality criteria. Such permits will be issued, however, requiring the discharger to meet special conditions for improved treatment or control.

C. If applicable water quality criteria are being violated by the discharge and EPA determines that the applicant's existing requirements (e.g., secondary treatment or its equivalent) are inadequate to abate the violation of the water quality criteria, EPA will specify more stringent requirements (e.g., 90% removal of BOD) in special conditions to the permit.

D. Most permits which are granted in accordance with Federal-State water quality standards will require the applicant to attain the level of treatment specified in the implementation plans contained in those standards. The permit will be granted, in such cases, upon the assumption that the prescribed level of treatment will be sufficient to abate the violation of the water quality criteria also contained in the Federal-State water quality standards. If, however, the State or EPA determines subsequent to the issuance of the permit that only a higher degree of treatment or control will abate the violated water quality criteria, EPA will require the applicant to provide the higher degree of treatment or control. Such upgrading in treatment or control may be required during the period of the granted permit.

E. In the formulation of water quality standards, the assignment of multiple water use classifications to the same stretch of receiving waters was encouraged. Where an applicant is discharging into receiving waters assigned multiple uses, EPA will impose the more stringent water quality criteria from each use. If, for example, the receiving waters are assigned uses for (1) drinking water and (2) propagation of sport fish, the more stringent coliform bacteria criterion from the former use and the more stringent temperature criterion from the latter use will be imposed.

F. If the volume of the receiving waters is so great as to not reflect change due to modification of individual sources, and the applicant is subject to an implementation plan, the requirements of that plan (e.g., secondary treatment or its equivalent) will be imposed even though there is no present evidence to show violation of the water quality criteria. If the applicant is not covered by an implementation plan, EPA will require that the discharge be subjected to certain minimum levels of treatment or control.

IV. USE OF IMPLEMENTATION PLANS IN PERMIT PROCESSING

A. The purpose of a well-drawn implementation plan is to provide a reasonable but strict timetable by which a contributor to the violation of applicable water quality criteria must take specific steps to abate the violation of the applicable water quality criteria.

B. It is recognized that some applicants are subject to implementation plans which are so liberal or lax as to give the applicant periods of time during which he is not required to progress towards the proper treatment or control of his effluent. EPA will revise such liberal or lax implementation plans to remove such periods of inactivity so that the applicant will be required to fulfill his implementation requirements in the shortest, reasonable period of time.

C. Interim dates will be imposed in every case where a permit is issued. If interim dates have not been specified in the implementation plan to which the applicant is subject, the State may specify such dates in its certification or comment. If the State does not specify such dates, EPA, in consultation with the State, will specify interim dates.

D. If an applicant has missed the final completion date in his implementation schedule, EPA will recommend denial of a permit until he has completed the work required to achieve compliance.

E. If an applicant has seriously overrun an interim date imposed in an implementation plan or enforcement conference recommendation, EPA will likewise recommend denial of a permit.

F. If an applicant is in compliance with the final completion date (because the date, being in the future, has not lapsed) of an implementation plan which does not contain interim dates and the applicant has begun construction of the facilities required by the implementation plan, EPA will recommend issuance of a permit.

G. If an applicant is in compliance with the final completion date of an implementation plan which does not contain interim dates but has not begun construction of the facilities required by the implementation plan and EPA determines that the applicant is certain to miss the final completion date in his plan, EPA will recommend denial of a permit. The greater the progress the applicant has made in his pre-construction planning and preparation requirements, the greater the margin EPA will allow the applicant in its determination of a certain future failure to meet the final completion date.

H. Notwithstanding the preceding paragraph, if an applicant is on a long term implementation plan (herein refers to any implementation plan with a final completion date three years or more in the future), EPA will recommend issuance of a permit, subject to the imposition of interim dates, even if the applicant has made no effort to fulfill his requirements. The interim dates imposed will specify immediate requirements of the applicant with which he must comply as special conditions of the permit.

V. USE OF STATE STANDARDS FOR INTRASTATE WATERS IN PERMIT PROCESSING

A. State standards for intrastate waters, where they exist, often may be as stringent as Federal-State standards for interstate waters. If EPA deems such State standards adequate, EPA will follow the State standards in the same manner as it applies Federal-State standards.

B. An applicant may be issued or denied a permit depending upon his compliance with or violation of adequate State water quality standards for intrastate waters.

C. If an applicant is discharging an inadequately treated effluent but is in compliance with State water quality standards which EPA considers inadequate, EPA will recommend granting the permit subject to special conditions specifying such additional requirements.

for effluent treatment or control as may be required to achieve acceptable standards.

VI. PERMIT PROCESSING WHERE NO WATER QUALITY STANDARDS APPLY

A. Some dischargers who discharge into intrastate waters or interstate waters not covered by Federal-State implementation plans, are not presently required to subject their effluent to treatment or control. Where no water quality standards apply to the discharge, whether the discharge is to interstate or intrastate waters, appropriate treatment and/or control requirements will be imposed upon the discharge comparable to the requirements that would have been established under implementation plans for that State applicable to industrial facilities under similar circumstances.

VII. EFFECT OF STANDARDS CONSIDERED INADEQUATE TO PROTECT WATER QUALITY

A. If EPA determines that applicable Federal-State water quality standards are inadequate, EPA will recommend that the duration of the permit be limited.

B. Where EPA determines that a Federal-State water use classification is inadequate, EPA will recommend that the duration of the permit be limited to three years or less. At the same time, EPA will notify the applicant and the State that it intends to initiate formal procedures to upgrade the inadequate standards.

C. A permit issued for discharges into waters classified for industrial use will be limited to a two-year duration unless the discharge is meeting a more stringent use classification.

D. Section 10(c) of the FWPC Act provides that any revision of Federal-State water quality standards must be approved by the Administrator of EPA. No informal modification, such as the unilateral extension of an implementation plan by a State, is a legal, valid revision. Thus, the applicant will be held to the requirements of the original implementation plan, even if the State has extended that plan's deadlines for the applicant, unless sound and strong reasons for the extension can be demonstrated in the applicant's particular case.

VIII. PERMIT DURATION

A. The maximum duration of a permit will be five years. In many cases, the duration will be less.

B. If an applicant has satisfied all applicable implementation plan requirements and is in compliance with applicable water quality criteria, EPA will recommend that the applicant be issued a five year permit.

C. If the applicant is subject to an acceptable implementation plan, the duration of the issued permit will be the time remaining (not to exceed five years) to comply with the requirements of the plan. In such a case, the termination date of the applicant's implementation plan will be made the expiration date of his permit.

D. Existing facilities are not required to present State certification before April 3, 1973. If EPA wishes to recommend that an existing facility which has not obtained certification be issued a permit which shall be valid beyond April 2, 1973, EPA will condition the continuance of that permit beyond April 2, 1973, upon the presentation of State certification by the applicant prior to April 3, 1973. If the applicant fails to present the certification, or if the State denies the certification, the permit shall terminate upon April 2, 1973. If the applicant is granted and presents certification (or certification is waived) prior to April 3, 1973, his permit shall continue for the stated duration (not to exceed five years in total.)

IX. NOTIFICATION OF AND REFERRALS TO EPA HEADQUARTERS

A. It is EPA policy that all applications shall be processed and all permit issuance or denial decisions be made at the regional level. During the initial phases of the Permit Program, however, EPA regional offices shall notify Permit Program Headquarters in Washington in the following cases:

(1) Where the regional office intends to override a State recommendation made in a State certification or comment except where the grounds for the disagreement is a serious violation of a State or Federal-State implementation plan by the applicant, and

(2) Where the regional office wishes to deviate from the policies outlined herein or in letters, directives, or orders from EPA Headquarters.

B. Upon notification or shortly thereafter, Permit Program Headquarters shall either approve of the regional office's intended course of action or request that the regional office forward the case to Permit Program Headquarters for further consideration.

X. RELATION OF PERMIT DENIAL TO ENFORCEMENT PROGRAM

A. Any application which is denied because: (a) the State denied certification, (b) the State comment opposed issuance of the permit and EPA agreed, or (c) the applicant has seriously defaulted in meeting existing requirements to install treatment or control facilities, shall be referred to EPA regional enforcement personnel.

B. EPA will recommend or initiate enforcement actions against the more serious polluters first in accordance with certain enforcement guidelines and priorities. Thus, not all denials of a permit will result in immediate enforcement action by EPA. The fact that EPA does not follow a permit denial with an immediate enforcement action does not mean, however, that EPA will not take such action at a later date.

C. Prosecution normally will be deferred if the applicant can complete his existing requirements within a short period of time (generally not to exceed one year) or if the applicant is moving forward on an expedited basis to achieve full compliance with his requirements. EPA enforcement personnel, in consultation with EPA permit program and technical personnel, will, where appropriate, furnish guidance to the applicant to clarify applicable requirements and to indicate time schedules for achieving compliance.

XI. USE OF SPECIAL CONDITIONS IN ISSUED PERMITS

A. Each issued permit may be subject to special conditions tailored to fit the circumstances of each discharge. In order to achieve uniform requirements for uniform circumstances EPA Headquarters will distribute to EPA regions model special conditions to guide the drafting of individual special conditions.

B. Special conditions will tend to fall into three general classifications:

(1) Limitations imposed upon the discharge authorized by the permit;

(2) Interim dates and requirements for treatment or control with which the permittee must comply during the period of the permit; and

(3) Monitoring, recording, and reporting requirements with respect to the discharge.

C. Where implementation plan requirements are not specific (e.g. secondary treatment or its equivalent) or do not specify how a certain level of treatment shall be achieved, EPA may in some instances specify appropriate treatment facilities, or waste abatement procedures, for individual cases.

D. If an applicant is subject to an acceptable Federal-State implementation plan or an acceptable State implementation plan, the dates and requirements of that plan will be incorporated into the special conditions of the permit.

E. EPA will establish specific quantitative effluent limitations whenever it is possible to do so with reasonable assurance that such requirements reflect proper analysis of the levels of reduction required to achieve applicable water quality criteria. It is recognized that it will not be possible to establish such quantitative limitations for more than a selected minority of applications involving the most serious cases of industrial pollution.

XII. PROPOSED FACILITIES

A. Proposed facilities must apply for State certification. No permit will be issued to a proposed facility in the absence of State certification, where the facility would otherwise be required to obtain certification.

B. No proposed facility will be permitted to discharge in violation of applicable water quality criteria if such criteria are presently being met. If the treatment to be applied to the proposed discharge cannot gain compliance with the applicable water quality criteria EPA will recommend denial of the permit.

C. Proposed facilities will not be on an implementation plan. All new installations will apply such treatment or control necessary to comply with applicable water quality criteria (where such criteria are being met) and related water quality considerations from the first day of operation.

D. Where no water quality standards apply to a proposed discharge, EPA and the State will determine what level of treatment is necessary to prevent a discharge which lowers the quality of the receiving waters.

E. EPA will advise and encourage proposed facilities to install the highest and best degree of waste treatment available under existing technology.

F. Applications for proposed facilities must be reviewed and processed on a first-priority basis to prevent avoidable delays in construction schedules of the applicants.

Chapter 300
Processing of Application

301 State Certification, Waiver, or Denial

State and interstate agencies will play a significant role in implementation of the Refuse Act Permit Program. Section 21(b) of the Federal Water Pollution Control Act precludes any Federal agency--the Corps of Engineers in this instance--from issuing a permit to conduct an activity which may result in a discharge into navigable waters unless the State or other appropriate agency certifies that there is reasonable assurance that the proposed activity will not violate applicable water quality standards.

State Certification Requirements

Although the revised EPA regulations concerning State certification of activities requiring Federal license or permit (18 CFR Part 61) will not require a specific certification format, certain specific items of information should be requested from the State and interstate agencies in the letter used when it is necessary to transmit permit applications from EPA (your office) to State and interstate agencies (see Chapter 700 for sample transmittal letter).

The content of the certification may be modified in any manner agreed to by the Regional Administrator, COE, and the certifying agency. However, the State agency must provide, as a minimum, a certification that there is reasonable assurance that the proposed discharge or deposit will not violate applicable water quality standards. To make best

use of State agency capabilities in assessing the potential impact of proposed discharges, your letter of transmittal should give the State an opportunity to provide any special conditions which should be made a part of the permit.

It would be helpful to obtain the rationale when the State denies certification because of the probability of legal action by the permit applicant.

Many of the Refuse Act permit applications will require certification by an appropriate State or interstate agency. There are, however, several situations where State certification is not required under Section 21(b) provisions. These situations and required actions in lieu of State certification are as follows:

Permit Applications Will Be Certified by the EPA Regional Representatives Acting for the Administrator -- No State Action Required

1. When the Administrator of EPA has promulgated Water Quality Standards pursuant to Section 10 (c) (2) of the Federal Water Pollution Control Act, as amended.
2. When a State or interstate agency has not been disignated by the Governor as having authority to give certification..

A Written Communication From the State Will Be Required

1. When the proposed discharge or deposit will be into a non-navigable tributary to navigable waters. (Although provisions of the Refuse Act apply to navigable waters and tributaries thereto, Section 21(b) of the Federal Water Pollution Control Act, as amended, applies only to navigable waters; thus, no State certification is required for non-navigable tributaries.

2. When the proposed discharge or deposit will orignate from a facility which existed or was lawfully under construction prior to April 3, 1970. In such cases, formal certification will be required by April 3, 1973.

No Certification or Written Communication Is Required

1. When the proposed discharge or deposit will affect the quality of waters for which no applicable water quality standards have been established. In such cases, which will generally be instances of intrastate waters, then you must condition permits in such a way so as to require the permittee to comply with the purposes of the Federal Water Pollution Control Act, as amended.

2. When the applicant for a Refuse Act Permit is a Federal agency. If the Federal agency contracts the operation of a facility, the COE will review the contract to determine who shall file the application.

Written Communications

Before fully processing applications in the situation mentioned above the Corps of Engineers will require, from the appropriate State or interstate agency, a description of the impact of the proposed discharge or deposit with comment on the desirability of granting a permit. Thus the States may comment on permit applications and make recommendations regarding the issuance of permits in cases involving discharges to non-navigable tributaries or involving facilities existing or under construction prior to adoption of the Water Quality

Improvement Act of 1970 (April 3, 1970). You should consider State descriptions of impact in the same manner as you would consider State certifications. Every effort should be made to obtain the same information content in "written communication" as in State certifications. The transmittal letter used to forward permit applications to the State or interstate agencies--where a written communication from the State is required--should request appropriate information.

Adequacy of State Certifications and Written Communications

Your efforts and those of the State and interstate agencies in reviewing permit applications should be coordinated in such a way as to minimize duplication of effort. In those instances where a State adequately considers water quality standards and determines appropriate conditions needed in a permit to ensure compliance with those standards, your role in the application review process will be minimal; conversely where a State waives certification of written communication, significantly more effort on your part will be required. Your review of State certifications and comments should be selective, with the primary objective of identifying areas of disagreement. In those cases where you disagree with a State's recommendation that a permit be issued, but determine that the applicant has acted in reasonable reliance on a State permit or other statement of required water pollution control measures, your recommendation to the Corps of Engineers should be to issue a permit subject to special conditions (prescribing a timetable for necessary corrective action) rather than to deny issuance of the permit.

Waiver Provisions

The certifying agency may notify the COE in writing that it waives its authority to act on a request for certification or written communications.

If the certifying agency does not send a written waiver, but fails or refuses to act on a request for certification or written comments within a reasonable period of time (which may not exceed one year) the certification requirement may be waived. You should then receive a written waiver from the COE.

Six months will generally be considered a reasonable period of time for State certification. However, under special circumstances, the District Engineer may require certification in a lesser period of time, or he may extend the allotted time period up to one year. In any case, the District Engineer must check with the certifying agency at the end of the allotted period of time before determing that a waiver has occurred.

In those cases where the State or interstate agency has waived its opportunity to certify or to otherwise commentoon a permit application, the Corps of Engineers cannot issue a permit without an expression of views by the EPA Regional Representative. Do not fully process the application without certification or a written waiver.

Denial by Certifying Agency

In those cases where the applicant is required to obtain a State or other appropriate certification that the discharge or deposit will not

violate applicable water quality standards, and the certification is denied, no permit may be issued. Denial of certification, in all cases, will result in termination of the application review process, and the applicant will be so notified by the Corps of Engineers.

August 1, 1971
301-6

302

Prorities for Permit Processing

* The following is a general guide for processing priority. Each region should work out the details and advise headquarters of their plan and any productive agreements made with the Corps and the State agencies.

I. New or modified discharges (this includes new industrial facilities, existing industrial facilities which have wastewater treatment facilities in the design or construction phases and industrial facilities which were previously unknown to the State and subsequently not on an implementation schedule).

II. Major industries (measured in terms of volume and strength of wastes fischarged to a waterway) which are under either State or Federal enforcement orders. This does not include those which are presently complying with a Federal = State Implementation Schedule.

III. Minor industries (measured in terms of volume and strength of wastes discharged to a waterway) which are under either State or Federal enforcement orders. This does not include those which are presently complying with a Federal - State Implementation Schedule.

IV. Major industsies (measured in terms of volume and strength of wastes discharged to a waterway) which are mot under enforcement orders. This includes those which are presently complying with a Federal - State Implementation Schedule.

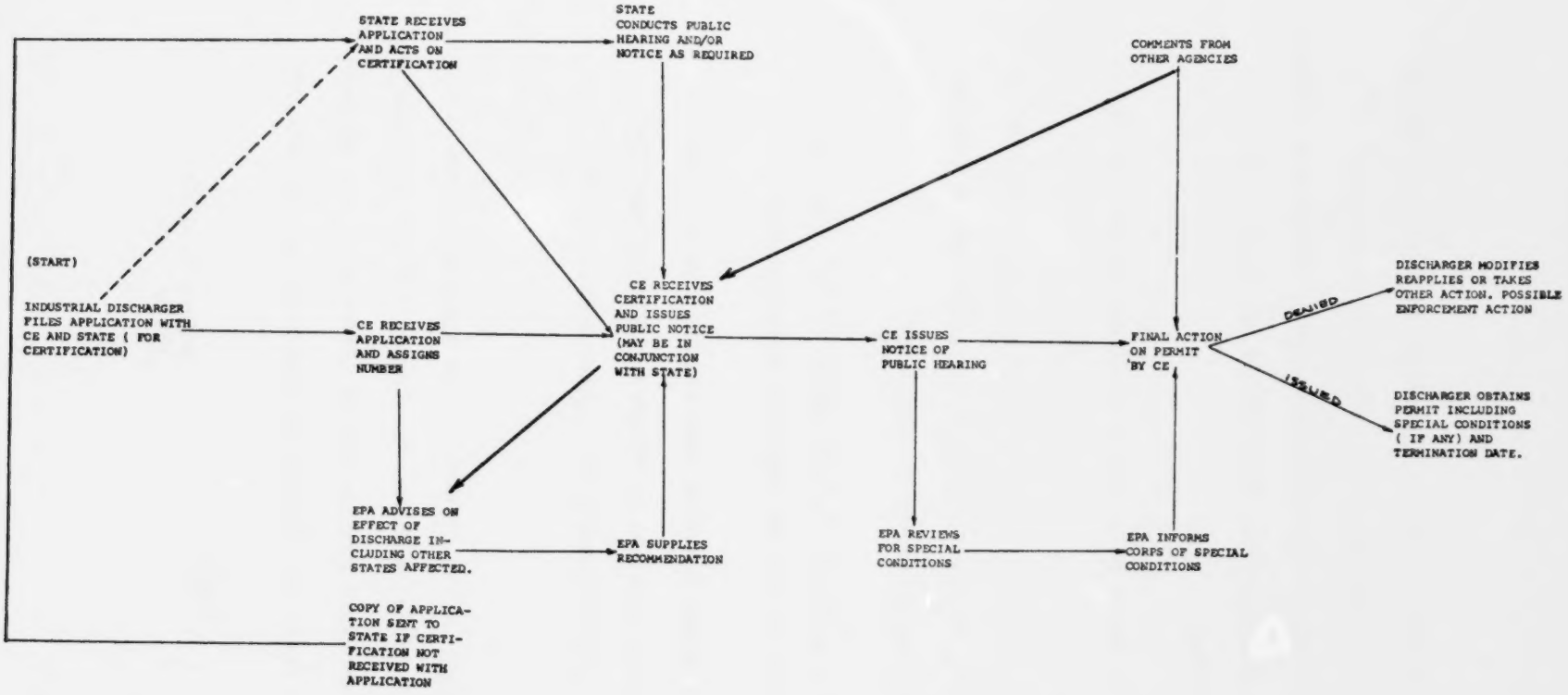
V. Minor industries (measured in terms of volume and strength of wastes discharged to a waterway) which are not under enforcement orders. This includes those which are presently complying with a Federal - State Implementation Schedule.

* This is intended to serve as a guide, other systems would be acceptable. Advise Headquarters if you are using a different priority system.

303 Interagency Procedures

The following diagram "A" shows the progress of an application through processing to issuance or denial.

41<


STATE RECEIVES APPLICATION AND ACTS ON CERTIFICATION
STATE CONDUCTS PUBLIC HEARING AND/OR NOTICE AS REQUIRED
COMMENTS FROM OTHER AGENCIES
(START)
INDUSTRIAL DISCHARGER FILES APPLICATION WITH CE AND STATE (FOR CERTIFICATION)
CE RECEIVES APPLICATION AND ASSIGNS NUMBER
CE RECEIVES CERTIFICATION AND ISSUES PUBLIC NOTICE (MAY BE IN CONJUNCTION WITH STATE)
CE ISSUES NOTICE OF PUBLIC HEARING
FINAL ACTION ON PERMIT BY CE
DENIED
DISCHARGER MODIFIES REAPPLIES OR TAKES OTHER ACTION. POSSIBLE ENFORCEMENT ACTION
ISSUED
DISCHARGER OBTAINS PERMIT INCLUDING SPECIAL CONDITIONS (IF ANY) AND TERMINATION DATE.
EPA ADVISES ON EFFECT OF DISCHARGE INCLUDING OTHER STATES AFFECTED.
EPA SUPPLIES RECOMMENDATION
EPA REVIEWS FOR SPECIAL CONDITIONS
EPA INFORMS CORPS OF SPECIAL CONDITIONS
COPY OF APPLICATION SENT TO STATE IF CERTIFICATION NOT RECEIVED WITH APPLICATION

CE - CORPS OF ENGINEERS
EPA - ENVIRONMENTAL PROTECTION AGENCY

GENERAL FLOW OF PERMIT APPLICATION PROCEDURES

304 COE-EPA Contact

The policy of the Corps and EPA is that there shall be full cooperation on the Permit Program at all organizational levels within the two agencies. There are also specific occasions when law or regulation require consulation advice, or notification. Time limits for some of these contacts have been established.

When either agency plans to issue policies, procedures, guidelines, or regulations concerning the Refuse Act, the other agency shall be consulted at least 30 days before issuance. This applies primarily to Headquarters level; however, if Regional policy or guidelines are being issued, the Corps District Office should be consulted.

***District Engineers shall promptly forward copies of the application and accompanying information to the EPA Regional representative.

***The EPA Regional Representative should then contact the District Engineer to obtain any needed information which was omitted from the application form. Other information may be requested directly from the applicant.

***EPA shall, within 30 days after receipt of the application and the certification, advise each affected State, the Corps, and the applicant, of any other State(s) whose water quality may be affected by the proposed discharge. (The affected State has 60 days to decide and advise EPA and

the Corps if there is objection to the permit and if a public hearing is desired).

***EPA Regional Representative, within 45 days after receipt of the application and certification, shall advise the Corps District Engineer with respect to the meaning, content, and application of water quality standards applicable to a proposed discharge or deposit and as to the impact which the proposed discharge or deposit may or is likely to have on water quality standards and related water quality considerations. Specifically:

(1) The meaning and content of water quality standards

(2) The application of water quality standards to the proposed discharge or deposit, including the impact of the proposed discharge or deposit on such water quality standards and related water quality considerations.

(3) The permit conditions required to comply with water quality standards

(4) The permit conditions required to carry out the purposes of the Federal Water Pollution Control Act where no water quality standards are available, and the duration of such conditions

(5) The protection afforded fish and wildlife resources by water quality standards, if any

(6) The interstate water quality effect of the proposed discharge or deposit.

(7) Recommended duration of the permit

(8) Recommendation as to whether the permit should or should not issue

(9) Basis for recommendation

If this advice is not provided within the 45 days allowed, and if an extension of time has not been requested from the District Engineer, the advice furnished by the State or other certifying authority will be considered by the District Engineer to represent EPA advice.

***The Regional Representative should inform the District Engineer if, in reviewing the application, the Regional Representative finds that there is a court dase pending on the project.

***The District Engineer will advise the Regional Representative if the DE determines that the permit application must be acted on by the State certifying agency in less than the routine 6-month period.

***The District Engineer, when he intends to schedule a public hearing, will notify the Regional Representative not less than 10 days in advance of the deadline for the filing of comments by the Regional Representative on the permit application. The Regional Representative may then wish to request an extension of the deadline.

***The District Engineer and the Regional Representative jointly hold any public hearing if one of the issues to be raised is "impact of the proposed discharge or deposit on applicable water quality standards or related water quality considerations."

August 1, 1971
304-3

***When the District Engineer receives notice of State or EPA recommendation for denial of a permit, he must deny it within 30 days and inform EPA of the denial. (If the District Engineer disagrees with theRegional Representative, he has the option of forwarding the application to the Secretary of the Army.)

***The District Engineer will consult with the Regional Representative prior to modifying, suspending, or revoking a permit on the grounds that discharges or deposits undertaken under the permitpose an imminent hazard to public health or safety.

***The District Engineer must notify the Regional Representative when he has reason to believe a discharge may have occurred adversely affecting water quality. He shall provide all information available, including a copy of theppermit and conditions if the discharger is a permit holder. The Regional Representative shall investigate and advise the District Engineer if, in his opinion, a violation of the Refuse Act having an adverse affect on water quality may have occurred. If so, the Regional Representative shall advise the District Engineer on the following points:

(1) The nature and seriousness of the apparent violation (Including, if the discharger is the holder of Refuse Act Permit, information as to the conditions of such permit which appear to have been violated).

(2) The nature and seriousness of the impact on water quality

(3) The measures, if any, taken or being taken by the discharger to comply with applicable water quality standards or the conditions of a Refuse Act permit, if any.

(4) The existence and adequacy of State or local pollution abatement proceedings.

(5) The applicability of the Federal Water Pollution Control Act, whether any administrative or judicial proceedings are being taken or contemplated thereunder, and the status of any such proceedings.

(6) His recommendations as to the action, if any, which should be taken under the Refuse Act and his reasons therefore. If the discharger is the holder of a Refuse Act permit, such recommended action may include in addition to or in lieu of prosecution under the Refuse Act for one or more of the remedies available thereunder, the suspension or revocation of the permit. A recommendation to suspend shall include a recommendation as to the period and conditions of the suspension.

***The Regional Representative, if he knows of a discharge not reported by an industry which has failed to apply for a permit, should so advise the District Engineer.

305 Use of General Conditions

Standardized general conditions are included as an integral part of the permit form as shown in Section 702. All of these general conditions are to be included in each permit authorized by the Secretary of the Army. However, in view of the broad wording of these general conditions, they should be supplemented and modified by appropriate special conditions as the proposed discharge situation requires. If for good and sufficient reason you feel that a general condition is completely inapplicable to a proposed discharge, then you should recommend the deletion of the general condition with an explanation to the Corps District Engineer.

306 Use of Special Conditions

The inclusion of special conditions in permits authorized by the Secretary of theArmy provides the discretionary flexibility which is essential in a program of this magnitude. However, any abuse through arbitrary and capricious actions may have a detrimental impact on the program as a whole and could lead to legal actions against the Federal government. Therefore, the special condition must be recognized and used with professional judgement.

Because of the nature of special conditions it is difficult to catalogue all of the situations where such conditions should be used. Experience gained in the actual processing of permit applications will provide you with such a catalog. You should use special conditions to supplement the substantive authorizations and general conditions of the permit where weaknesses, deficiencies, and inadequacies can be identified. Generally, special conditions may be required where water quality standards are inadequate or nonexistent; to implement Federal environmental policies; when oil or hazardous and toxic substances are to be discharged; in connection with monitoring, surveillance and reporting of discharges; and where the need for spill prevention plans is apparent.

In systematically analyzing a permit application, you must keep in mind that a permit should be authorized only if environmental considerations are protected. You must identify problem areas where special conditions

might be necessary; formulate and evaluate alternative special conditions for solving the problem; and select the most reasonable alternative that satisfies the objective.

Uniformity in the wording of special conditions will minimize problems of policy and interpretation. Sample special conditions will be drafted as they are identified and catelogued.

You should refer any questions concerning the use or wording of special conditions which cannot be resolved at the regional level, to Headquarters, Office of Refuse Act Programs.

August 1, 1971
306-2

307 Period of the Permit

Short term permits may be issued to dischargers who are not now complying with applicable water quality criteria in accordance with national policy but who are taking corrective action.

Normally 5 year permits are issued to dischargers who are in compliance with water quality criteria in accordance with national policy.

Permits will run for a period of not less than 6 months. The expiration date will coincide with interim or final dates of approved implementation schedules, or other landmark dates which appear as special conditions to the permit. (See Chapters 200 and 600). Permits for a period less than 5 years may be issued for a facility such as one:

a. that was in existence or under construction prior to April, 3, 1970. The permit will expire on April 2, 1973.

b. that can be expected to change the discharge

c. that is on an implementation schedule

d. that is subject to unresolved water quality standards.

Note that the permit is valid for its stated duration subject to the general conditions of the permit.

A permit for a period in excess of 5 years may be issued when:

a. The District Engineer considers it appropriate and

b. Thepermit is subject to revalidation after 5 years, and

c. It has the approval of the Administrator of EPA or his designated representative.

308 Consultation on Technical Matters

Technical problems will arise during the processing of permits that you will need to have answered before you can continue with the permit processing. Questions involving manufacturing processes, analysis of data, raw waste quality and characteristics, design loadings, etc. will appear. You can and should resolve these problems at the regional level. However, when additional expertise is needed, you should refer the problem to Headquarters, Office of Refuse Act Programs. A group of technical experts will be available for consultation. Additional resources such as key laboratory people, industrial organizations, and technical consultants may also be available to you as needed. The Division of Technical Support is gearing up to provide the support you need efficiently and promptly.

309 Request for Additional Information

Should additional information be required from an applicant, or the data previously supplied on a permit application be incomplete or apparently incorrect (e.g., as indicated by the edit routine used as part of the computer storage routine), the appropriate part or page of the application form should be stamped or marked "Additional Data" and sent directly to the applicant. A copy of the instructions should also be included when the request is for new (not previously required) items. The application number, and, where necessary, the discharge serial number, should be entered on the form or page sent and the number of item to be completed/clarified should be clearly checked or encircled in red. When information concerning a parameter is requested (Item 22, Section II, Part A or Part B of the form), the box bearing the parameter name and code should be checked or encircled in red, as should the box in the column where the data must be supplied. This procedure provides a quick visual completeness check upon return of the application page and simplifies the input of the new data into the computerized data storage system.

The request for additional data should be accompanied by a cover letter or form stating the reason for the request and which items are to be completed on the enclosed application form or page (e.g., the checked items) and instructing the applicant to return the completed form or page to the District Engineer.

Send the District Engineer handling the given application a copy of the cover letter together with the Permit Application Transmittal Form (PATF) where Item 01/03 ("Additional./clarificatn. of data reqd.") on the EPA half should be checked and dated.

When the requested information is submitted by the applicant to the District Engineer's office, it will be forwarded by the latter to the EPA office using the "Additional data forwarded" block on the PATF.

310 Communications with Headquarters

You should notify the Office of Refuse Act Programs at Headquarters, EPA, in writing, if a Refuse Act application involves any of the following special circumsances:

(a) there is a problem, unresolved at the regional level, with a discharge or deposit including any oils or hazardous or toxic materials,

(b) the discharge has international effects and/or another country (such as Canada and Mexico) expresses interest in the application for a permit and its outcome

(c) the regional office intends to override a State recommendation made in a State certification or comment except where the grounds for the disagreement is a serious violation of a State or Federal-State implementation plan by the applicant

(d) where the regional office wishes to deviate from the policies, directives, or orders from EPA Headquarters.

(e) there is an unresolved objection by the Department of Commerce or the Department of the Interior to permit due to the impact on Fish and Wildlife

In the absence of the above specific instances, notify Headquarters by telephone in circumstances involving any unusual difficulty or requiring National uniformity.

When notified, or shortly therafter, Headquarters will ffrst advise you whether to continue to suspend the processing of the application pending Headquarters' decision of how to handle the difficulty or special circumstances. Headquarters will then decide within a reasonable time after notificatinn from the Regional Administrator whether or not the case should be referred to Washington.

August 1, 1971
310-2

Section 311 - Protection of Confidential Answers

The following procedures pertain to the protection of confidential answers submitted with applications for Refuse Act permits and are not to be confused with procedures for protection of classified defense information.

a. Designation of Program Employees for Access to Confidential answers - The Regional Administrator or his designee will designate, in writing, those persons responsible for the receipt, control, review, and handling of the confidential answer sheets submitted with the applications. One employee will specifically be designated as the Refuse Act Permit Program custodian of these confidential answer sheets and will release them only to those other employees so designated. An alternate custodian(s) will be specifically designated to act in the absence of the custodian.

b. Receipt and Handling - The Refuse Act Permit Program Regional Custodian will initially receive the applications for Refuse Act permits from the U.S. Army Corps of Engineers. Any applications received from another source will be directed to the Corps for their preliminary action. The EPA Regional custodian will promptly review each application received from the Corps and remove the confidential answer sheets which may be attached. He shall assure that the application identification number is affixed to the confidential answer sheet and will indicate on the application that confidential information was removed. In addition, at this time,

a cover record sheet containing the application identification number will be stapled to the confidential answer sheet.

The custodian may then either make dissemination to the individual or individuals designated as authorized to review the confidential answer sheets or he may store them in the manner mentioned below until they are needed.

c. Storage - Confidential answer sheets shall be stored, at the minimum, in a locked bar file cabinet with a GSA approved three way combination padlock during nonworking hours and/or when not in use. Access to this cabinet shall be restricted to the custodian and alternate(s) who have been authorized as provided in paragraph 1.

The COE has indicated that the confidential answer will be in a separate envelope marked "official use only." You should work out further procedures with the District Engineer and advise him not to send any confidential information until you are prepared to receive it.

Please advise Refuse Act Permit Program, Washington, D. C. of the names of the Refuse Act Permit Program Custodian and alternates prior to July 1, 1971, and of any changes after that date.

August 1, 1971
311-2

312 Hazardous Substances

(Under revision)

313 Fish and Wildlife Impact

The COE will send copies of all applications to the local representative of the Department of the Interior and to the National Marine Fisheries Service of the National Oceanic Atmospheric Administration (NOAA, Dept. of Commerce). If, after EPA has agreed to issuance of the permit, a representative of Interior or Commerce has continued objection to the issuance of a permit on the grounds that the discharge or deposit will have a significant and unreasonable adverse impact on fish and wildlife resources, the Corps will delay issuance for 30 days. The 30-day period begins when the Corps receives written notice from Interior or Commerce that the matter will be referred to Washington. At that time, you are to notify EPA headquarters.

In Washington, the Secretary of the Army, the EPA Administrator, and the Secretary of Commerce or Interior will resolve the matter.

314 Potentially Critical Industries

Certain industries which are not now on the critical list may be critical polluters, and may be added to the critical list at some future time. Criteria for selection for this list were:

1) constituent materials and manufacturing processes

2) related industries already included on critical list (implying a similarity of process)

3) product itself is a potential pollutant

4) large water user (in comparison to number of establishments)

You may wish to ask these industries for additional information, not included on their application forms at present.

Preliminary List of Potentially Critical Industries

19	Ordnance and Accessories (nitrates, nitrites, ammonia)
205	Bakery Products (B.O.D.)
2431	Millwork (T.O.C.)
2499	Wood Products, not elsewhere classified
25	Furniture and Fixtures
27	Printing, Publishing, and Allied Industries
286	Gum and Wood Chemicals
2872	Fertilizers, Mixing only
2893	Printing Ink
2895	Carbon Black
2899	Chemicals and Chemical Preparations, not elsewhere classified
303	Reclaimed Rubber (thermal)
34	Fabricated Metal Products, Except Ordnance, Machinery, and Transportation Equipment
38	Professional, Scientific, and Controlling Instruments; Photographic and Optical Goods; Watches and Clocks (cyanides, chromates, copper, zinc, cadmium and nickel from cleaning, pickling and electroplating; chromates in air conditioning cooling water)
335	Rolling, Drawing, and Extruding of Nonferrous Metals
3419	Silverware, Plated Ware and Stainless Steel Ware
446	Services Incidental to Water Transportation
5091	Metals and Minerals Wholesalers, not elsewhere classified
5092	Petroleum and Petroleum Products Wholesalers
5093	Scrap and Waste Materials Wholesalers

7211	Power Laundries, Family and Commercial (phosphates)	
7216	Dry Cleaning and Dyeing Plants, Except Rug Cleaning	
7217	Rug Cleaning and Repairing Plants	
7218	Industrial Launderers (phosphates)	
7395	Photofinishing Laboratories (dichromate, ferro - and ferricyanide)	
7535	Paint Shops	
7542	Automobile Laundries	
807	Medical and Dental Laboratories	
	Waste Acceptance Corporations	
Government:		(19 Ordnance
		(28 Explosives
		(
Federal 91)		(
State 92)		(
Local 93)		(37 Ship and Boat Yards

August 1, 1971

314-2

Chapter 500
Public Involvement

501 Public Notice

A. The Corps will give public notice of receipt of each application for permit.

1. The public has 30 days after such notice to submit comments.

2. The Corps must send copies of such comments to the applicant and allow time for his reply, rebutting or resolving the criticisms.

B. The Corps will give public notice of hearing, as specified in Sec. 1.2 33CFR part 212.

502 Public Hearing

Public hearings should not be held indiscriminantly while the pollution continues unabated. There are, however, some valid reasons for holding these proceedings.

In those cases where a public hearing is held, we anticipate the EPA representative will withhold his advice to the district engineer pending the holding of the hearing and his consideration of the evidence presented.

A. Informal hearings (COE/EPA) (Public interest type)

1. May be held if public interest so warrants, as determined by the District Engineer.
2. Are called by the Corps, but held jointly with EPA if one of the issues to be raised is water quality.
3. Are informational only, i.e., no decision is reached at the hearing.
4. Involve EPA in the role of a listener. NOTE: Be especially careful to avoid giving any opinions on the effect of the discharge, prior to hearing the information presented.

B. Formal hearings

1. Held if:
   a. A discharge from one State affects water of Another State and the second State requests a hearing.
   b. The Corps proposes suspension of the permit
   c. New standards are promulgated

2. EPA should be prepared to provide in both type hearings:

a. Information for copying

(1) The application in question

(2) The state certification or written communication,

(3) Comments and complaints filed by interested parties

(4) Replies of the applicant, rebutting or resolving any objection

b. Information on sampling techniques, water quality standards and past dealing with the company. It is extremely important that material supplied under this subsection not contain any indication of the Regional Representative's opinion as to whether, or upon what terms, the permit should be granted. What is submitted should be strictly factual, or the scientific opinions or analysis of our technical personnel (such as their expert opinion of the cause of the polluted condition of a body of water); in no case should the opinion of the Regional Representative on any matter be submitted. It is essential that these instructions be followed, so that there can be no suggestion that the Regional Representative has prejudged the matter in advance of the hearing.

c. Information on water quality standards

(1) The applicable water quality standards; and a statement by EPA technical personnel only,

as to the protection afforded to fish and wildlife resources by the applicable standards, if any.

(2) Statement by EPA technical personnel only, appraising the likely impact of the proposed discharge or deposit on the water quality standards and related water quality considerations.

(3) Statement by EPA technical personnel only, describing the interstate water quality effect of the proposed discharge or deposit,

503 Public Disclosure

Information on applicants for permits shall be available to the public for inspection and copying in the office of the District Engineer. YOU SHOULD REFER ALL REQUESTS FOR SUCH INFORMATION TO THE APPROPRIATE CORPS OFFICE.

A. Certain information must be made available to the public in the Corps office and at hearings.

1. State water quality certifications or comments obtained pursuant to Section 21(b).
2. The comments of local, State, and Federal agencies on a permit application.
3. All information provided by an applicant or permit holder identifying the nature and frequency of the discharge.
4. Plans for treatment facilities.

B. Certain information, such as trade secrets, may be accorded confidential status, and will not be available to the public if:

1. The applicant lists such information on a separate sheet only, that is, does not include it on the application form itself. This sheet should be entitled "Confidential Answers" AND;
2. The applicant makes a specific written request for confidential status, justifying each request, and;
3. The Corps rules that such information is in fact entitled to such protection.

504 Public Contribution of Evidence

A. The public should be told that written information regarding alleged polluters should be sent to the Corps. If this is not practical, you may receive it, but such information should not be sent directly to the U. S. Attorney.

B. The Refuse Act states that if a citizen provides the U. S. Attorney with information leading to the conviction (in a government-brought suit) of a polluter the court may award him one-half of any fine levied.

C. Some citizens may contemplete presenting the information in court themselves in the form of a Qui Tam suit, that is, a civil suit brought by a private citizen when the government has failed to do so; the citizen is awarded one-half any fine levied.

D. A citizen wishing to contribute evidence should follow as closely as possible, the same guidelines for gathering, identifying, documenting, and analyzing samples, and preparing written statements, as are followed by EPA.

E. If you receive information:

1. Record and consider the complaint when establishing monitoring priorities.

2. Acknowledge receipt of the complaint, making specific note if:

a. You are already watching the facility reported on, especially if you have sufficient evidence for prosecution without the citizen's contribution.

b. If the facility is in violation but is on an implementation schedule and has a temporary permit.

c. If the facility has submitted a permit application.

August 1, 1971
504-2

Chapter 600

Review Procedures

SIMPLIFIED CHART FOR DISCHARGES INTO INTERSTATE WATERS

Federally-approved water quality criteria apply to the waters

Applicant required to apply for State certification				Applicant not required to apply for State certification; EPA required to solicit State comment									
				Discharge is into a non-navigable tributary					Discharge is from an existing (as of April 3, 1970) facility				
State denies certification	State grants certification		State waives right to certify	State comment opposes issuance		State comment favors issuance		State waives right to comment	State comment opposes issuance		State comment favors issuance		State waives right to comment
	EPA agrees	EPA disagrees		EPA agrees	EPA disagrees	EPA agrees	EPA disagrees		EPA agrees	EPA disagrees	EPA agrees	EPA disagrees	
1													
	2	3	4	5	3	2	3	4	5	3	2 6	3	4 6 (if permit issues)

August 1, 1971

601-1

DIRECTIONS FOR USE WITH CHART FOR DISCHARGES INTO

INTERSTATE WATERS

1. Do nothing. The District Engineer is bound by the denial of certification and must deny the permit. Refer the application to your Regional enforcement staff.

2. Recommend to the District Engineer that the permit be issued subject to what ever special conditions you feel are necessary.

3. Notify Permit Program Headquarters in Washington. Upon notification or shortly thereafter, Permit Program Headquarters shall either approve of your recommended course of action, make additional or modified recommendations, or ask you to forward the case to Permit Program Headquarters for further consideration.

4. Make a de novo (from the start), complete determination as to whether the proposed discharge complies with the applicable federally-approved water quality standards. See chart entitled "Use of federally-approved water quality standards in permit processing."

5. Recommend to the District Engineer that the permit be denied.

6. According to Section 21(b)(7) of the FWPCA (the "Grandfather clause"), a facility covered by Section 21(b) which is under construction prior to April 3, 1970, is not required to obtain certification, except that a permit acquired without certification must terminate upon April 2, 1973, unless the applicant obtains certification prior to April 2, 1973. Therefore, you must limit the duration of permits for existing facilities depending upon the point at which the applicant obtains State certification.
    1) If the application for the existing facility is accompanied by State certification, or if the applicant obtains such certification during the processing period, recommend to the District Engineer whatever duration you feel is proper without regard to the April 2, 1973, termination date.
    2) If the applicant is covered by Section 21(b) and has not applied for State certification, you may recommend one of the following:
        a) Inform the District Engineer that the permit shall terminate on April 2, 1973, or

b) Inform the District Engineer that the permit shall terminate on April 2, 1973, but that if the applicant obtains certification prior to April 2, 1973, the permit shall continue beyond that date (the duration not to exceed five years) without the necessity of reapplication or any other action by the applicant, or
c) Recommend to the District Engineer that the permit terminate prior to April 2, 1973 as in the case of a one year permit.

SIMPLIFIED CHART FOR DISCHARGES INTO INTRASTATE WATERS

STATE water quality criteria apply to the waters														NO water quality criteria apply to the waters				
Applicant required to apply for State CERTIFICATION				Applicant not required to apply for State certification; EPA required to solicit State COMMENT										Not solicited	State COMMENT solicited by EPA (even though there are no "applicable" water quality criteria)				
State denies certification	State grants certification		Waives	Discharge is into a non-navigable tributary					Discharge is from an existing (as of April 3, 1970) facility										
				State comment opposes issuance		State comment favors issuance		Waives	State comment opposes issuance		State comment favors issuance		Waives		State comment opposes issuance		State comment favors issuance		Waives
	EPA agrees	EPA disagrees		EPA agrees	EPA disagrees	EPA agrees	EPA disagrees		EPA agrees	EPA disagrees	EPA agrees	EPA disagrees			EPA agrees	EPA disagrees	EPA agrees	EPA disagrees	
1	2	3	7	5	3	2	3	7	5	3	2	3	7	7	5	3	2	3	7
	8	9 8		10	10	10	9 10		10	10	6 10	9 10	6		11	11	11	9 11	

August 1, 1971
502-1

DIRECTIONS FOR USE WITH CHART FOR DISCHARGES INTO

INTRASTATE WATERS

1. Do nothing. The District Engineer is bound by the denial of certification and must deny the permit. Refer the application to your Regional enforcement staff.

2. Recommend to the District Engineer that the permit be issued subject to what ever special conditions you feel are necessary.

3. Notify Permit Program Headquarters in Washington. Upon notification or shortly thereafter, Permit Program Headquarters shall either approve of your recommended course of action, make additional or modified recommendations, or ask you to forward the case to Permit Program Headquarters for further consideration.

4. Make a de novo (from the start), complete determination as to whether the proposed discharge complies with the applicable federally-approved water quality standards. See chart entitled "Use of federally-approved water quality standards in permit processing."

5. Recommend to the District Engineer that the permit be denied.

6. According to Section 21(b)(7) of the FWPCA (the "Grandfather clause"), a facility covered by Section 21(b) which is under construction prior to April 3, 1970, is not required to obtain certification, except that a permit acquired without certification must terminate upon April 2, 1973, unless the applicant obtains certification prior to April 2, 1973. Therefore, you must limit the duration of permits for existing facilities depending upon the point at which the applicant obtains State certification.
    1) If the application for the existing facility is accompanied by State certification, or if the applicant obtains such certification during the processing period, recommend to the District Engineer whatever duration you feel is proper without regard to the April 2, 1973, termination date.
    2) If the applicant is covered by Section 21(b) and has not applied for State certification, you may recommend one of the following:
        a) Inform the District Engineer that the permit shall terminate on April 2, 1973, or

b) Inform the District Engineer that the permit shall terminate on April 2, 1973, but that if the applicant obtains certification prior to April 2, 1973, the permit shall continue beyond that date (the duration not to exceed five years) without the necessity of reapplication or any other action by the applicant, or

c) Recommend to the District Engineer that the permit terminate prior to April 2, 1973, as in the case of a one year permit.

7. If there are no water quality standards upon which to base your determinations, refer to other water quality considerations such as federally-approved water quality standards for guidance. On the basis of these and other water quality considerations, determine if any permit conditions can be imposed to insure that the discharge will not violate the purposes of the Federal Water Pollution Control Act. If you are able to formulate such conditions, recommend to the District Engineer that the permit be issued subject to those conditions. If you cannot formulate any conditions which would insure that the purposes of the FWPCA were being carried out, recommend to the District Engineer that the permit be denied.

8. For the present, limit your review of State certification of discharges into intrastate waters to the following:
   a) Whether the discharge contains oil or hazardous or toxic materials;
   b) Whether fish and wildlife or their habitats are afforded adequate protection;
   c) Whether the State standards applied contain loopholes or are so weak as to be inconsistent with the purposes of the FWPC Act; and
   d) Where there are no applicable water quality standards, whether the establishment and application of appropriate Federal standards is necessary to prevent the discharge from being inconsistent with the purposes of the FWPC Act.

9. If the basis for your disagreement is an unacceptable implementation plan, give the certifying agency written notification containing (1) a statement of objection to the

unacceptable implementation plan, (2) a proposed acceptable implementation plan, (3) a request that the certifying agency impose the proposed implementation plan, and (4) a deadline within which the certifying agency must respond to your notification. If the response of the certifying agency is unsatisfactory, notify Permit Program Headquarters as described in No. 3 above. If the response of the certifying agency resolves your disagreement, recommend to the District Engineer that the permit be issued subject to whatever special conditions you feel are necessary.

10. The scope of review of State comments with respect to discharges into intrastate waters has not been settled. For the present, limit your review of State comments in the same manner that you limit your review of State certifications as described in No. 8 above.

11. Corps regulations do not require the solicitation of State comments where there are no applicable water quality standards, State or Federal. Any comments you solicit will not, therefore, be based on water quality standards in the conventional form of criteria based on water use classification with a plan to implement the criteria. Whereas comments not based on standards would seem to carry less weight, the scope of any independent determination you might make has not been settled.

USE OF FEDERALLY-APPROVED WATER QUALITY STANDARDS IN PERMIT PROCESSING

Standards contain NO antidegradation statement			Present quality of waters below applicable water quality criteria ---therefore, there is no antidegradation violation ---therefore, there is a violation of the water quality criteria						Present quality of waters above applicable water quality criteria ---therefore, there is no violation of the water quality criteria			
NO violation of applicable criteria		Violation of applicable criteria	"Single polluter" situation					"Multiple polluter" situation				
			Existing discharge				Proposed discharge	Existing or proposed discharge		NO violation of antidegradation statement		Violation of antidegradation statement	
Existing discharge	Proposed discharge	Existing or proposed discharge	Not on any Plan	Applicant subject to IMPLEMENTATION PLAN				Compliance with applicable water quality criteria attainable	Compliance with applicable water quality criteria NOT attainable	Existing discharge	Proposed discharge	Existing discharge	Proposed discharge
				Implementation plan has INTERIM dates		Implementation plan has TERMINAL date only							
				Applicant in compliance	Applicant NOT in compliance	Applicant in compliance	Applicant NOT in compliance						
2	2		See chart entitled "USE OF IMPLEMENTATION PLANS IN PERMIT PROCESSING"							2	Not possible	2	
	13	16	14				15	16	17			15	12

79

August 1, 1971
603-1

DIRECTIONS FOR USE WITH CHART FOR USE OF FEDERALLY-

APPROVED WATER QUALITY STANDARDS IN PERMIT PROCESSING

2. Recommend to the District Engineer that the permit be issued subject to whatever special conditions you feel are necessary.

5. Recommend to the District Engineer that the permit be denied.

12. If the proposed activity is judged by the State and by you to be justifiable as a result of necessary economic or social development and will not interfere with present or possible uses of the waters, and the applicant agrees to install the highest and best degree of waste treatment or control available under existing technology, recommend to the District Engineer that the permit be issued subject to the conditions you feel are necessary. In all other cases, recommend to the District Engineer that the permit be denied.

13. Recommend to the District Engineer that the permit be issued subject to whatever conditions you deem necessary to insure compliance with minimum levels of treatment or control. Inform the applicant that, because his discharge is degrading waters which are or will be covered by an antidegradation standard, EPA will eventually require him to upgrade his treatment or control so as to minimize or halt further degradation of the receiving waters.

14. Determine the level of treatment or control necessary to gain compliance with the violated water quality criteria. Send the certifying agency a written communication containing (1) a request that the certifying agency impose a schedule for the implementation of the water quality criteria, (2) a statement of the level of treatment or control you deem necessary to gain compliance with the violated water quality criteria, (3) a request that the certifying agency impose that level of treatment or control in determining the implementation schedule, and (4) a deadline within which the certifying agency should respond to your written communication.

    a) If you <u>agree</u> with the certifying agency's response, recommend that the Corps issue the permit subject to the implementation plan imposed by the certifying agency and any other conditions you deem necessary to gain compliance with the violated water quality criteria.

b) If you disagree with the certifying agency's response, notify Permit Program Headquarters in Washington.

15. As even the highest level of treatment or control cannot achieve compliance, the permit should not be issued. Before recommending denial to the District Engineer, however, refer the application to Permit Program Headquarters in Washington along with the State certification or comment, relevant documents in the file, your recommendation as to whether or not the permit should be issued and the reasons for your recommendation.

16. Treat each applicant as a "single polluter" and proceed as directed under the "single polluter" situation columns.

17. Gather together the applications of the contributing dischargers and refer them as a group to your regional enforcement staff. No notification of Permit Program Headquarters is necessary in this case even if your action conflicts with a State grant of certification or a State comment favoring issuance of the permit.

18. Recommend to the District Engineer that the permit be issued subject to compliance with each of the remaining interim dates.

19. Recommend to the District Engineer that the permit be issued subject to compliance with the violated interim date within a short period of time set by you and with each of the remaining interim dates.

20. Hold application in abeyance. Devise (in cooperation with the certifying agency if possible) a new schedule permitting compliance with terminal date of the implementation plan. Immediately notify applicant in writing that he must certify he is in compliance with the violated interim date within a short period of time set by you. If you receive the certification within the deadline set by you, recommend to the District Engineer that the permit be issued subject to compliance with each remaining interim date in your revised schedule. Make such recommendation even if applicant is unlikely to meet his terminal date. If the certification does not arrive within the period of time set by you, recommend to the District Engineer that the permit

be denied. Then refer the application to your Regional enforcement staff.

21. Refer the application to your Regional enforcement staff. No notification of Permit Program Headquarters is necessary even if your action conflicts with a State grant of certification or a State comment favoring issuance of the permit.

22. Recommend to the District Engineer that the permit be issued with a duration equal to the time remaining before the terminal date (not to exceed five years), along with any other conditions you deem necessary.

23. Same as No. 22 above except that, in addition to any other conditions you impose, impose a condition that construction begin within three to four months unless weather conditions require a longer wait.

24. Same as No. 22 above, except that, in addition to any other conditions you impose, impose conditions that the applicant certify within six months that his final plans have been approved and that he certify within nine to twelve months that he has begun construction of any facilities necessary to reach the required level or treatment or control.

25. Same as No. 22 above, except that, in addition to any other conditions you impose, impose conditions that the applicant certify within three months that he has submitted preliminary plans for approval, that he certify within nine months that his final plans have been approved and that he certify within twelve to fifteen months that he has begun construction of the facilities necessary to reach the required level of treatment or control.

26. In consultation with the State certifying agency, devise a set of interim dates to be imposed as special conditions of the permit. Where many applicants have the same terminal date, work out with the State a standard boilerplate special condition schedule of interim dates to be inserted in the permits of those applicants having the same terminal date. Recommend to the District Engineer that the permit be issued subject to compliance with each interim date you and the State impose and any other conditions you deem necessary.

27. Suspend processing of the application. Immediately notify applicant in writing that he has three months to certify to you that his facility is completed and operating up to the required level of treatment or control. If you receive the certification from the applicant within the three month period, recommend to the District Engineer that the permit be issued subject to whatever conditions you deem necessary. If the certification does not arrive within the three month period, recommend to the District Engineer that the permit be denied. Then refer the application to your regional enforcement staff.

28. Immediately notify applicant in writing that he must certify to you every three months his progress in completing his treatment facilities and that he has one year to certify that his facilities are completed and operating up to the required level of treatment or control. Refer the application to your regional enforcement staff. No notification of Permit Program Headquarters is necessary even if your action conflicts with a State grant of certification or a State comment favoring issuance of the permit.

USE OF IMPLEMENTATION PLANS IN PERMIT PROCESSING

Plan has INTERIM DATES				Plan has TERMINAL DATE only										
Applicant in compliance with interim dates	Applicant NOT in compliance with interim dates			Applicant in compliance with terminal date								Applicant NOT in compliance with terminal date		
	Slight overrun (3 months or less)	Tolerable overrun (12 months or less)	Serious overrun (more than 12 mon)	Applicant has initiated CONSTRUCTION of required facilities	Applicant has obtained APPROVAL of FINAL PLANS		Applicant has obtained APPROVAL of PRELIMINARY PLANS		Applicant has NOT obtained approval of preliminary plans		Applicant's terminal date is more than three years in the future	Can meet terminal requirement within 3 mon.	Can meet terminal requirement within 12 mon.	Cannot meet terminal requirement within 12 mon.
					Prospective Overrun of less than 12 months	Prospective Overrun of more than 12 months	Prospective Overrun of less than 9 months	Prospective Overrun of more than 9 months	Prospective Overrun of less than 6 months	Prospective Overrun of more than 6 months				
2	2		5	2	2	5	2	5	2	5	2		5	5
18	19	20	21	22	23	21	24	21	25	21	26	27	28	21

DIRECTIONS FOR USE WITH CHART FOR USE OF IMPLEMENTATION PLANS IN PERMIT PROCESSING

2. Recommend to the District Engineer that the permit be issued subject to whatever special conditions you feel are necessary.

5. Recommend to the District Engineer that the permit be denied.

12. If the proposed activity is judged by the State and by you to be justifiable as a result of necessary economic or social development and will not interfere with present or possible uses of the waters, and the applicant agrees to install the highest and best degree of waste treatment or control available under existing technology, recommend to the District Engineer that the permit be issued subject to the conditions you feel are necessary. In all other cases, recommend to the District Engineer that the permit be denied.

13. Recommend to the District Engineer that the permit be issued subject to whatever conditions you deem necessary to insure compliance with minimum levels of treatment or control. Inform the applicant that, because his discharge is degrading waters which are or will be covered by an antidegradation standard, EPA will eventually require him to upgrade his treatment or control so as to minimize or halt further degradation of the receiving waters.

14. Determine the level of treatment or control necessary to gain compliance with the violated water quality criteria. Send the certifying agency a written communication containing (1) a request that the certifying agency impose a schedule for the implementation of the water quality criteria, (2) a statement of the level of treatment or control you deem necessary to gain compliance with the violated water quality criteria, (3) a request that the certifying agency impose that level of treatment or control in determining the implementation schedule, and (4) a deadline within which the certifying agency should respond to your written communication.

    a) If you <u>agree</u> with the certifying agency's response, recommend that the Corps issue the permit subject to the implementation plan imposed by the certifying agency and any other conditions you deem necessary to gain compliance with the violated water quality criteria.

b) If you disagree with the certifying agency's response, notify Permit Program Headquarters in Washington.

15. As even the highest level of treatment or control cannot achieve compliance, the permit should not be issued. Before recommending denial to the District Engineer, however, refer the application to Permit Program Headquarters in Washington along with the State certification or comment, relevant documents in the file, your recommendation as to whether or not the permit should be issued and the reasons for your recommendation.

16. Treat each applicant as a "single polluter" and proceed as directed under the "single polluter" situation columns.

17. Gather together the applications of the contributing dischargers and refer them as a group to your regional enforcement staff. No notification of Permit Program Headquarters is necessary in this case even if your action conflicts with a State grant of certification or a State comment favoring issuance of the permit.

18. Recommend to the District Engineer that the permit be issued subject to compliance with each of the remaining interim dates.

19. Recommend to the District Engineer that the permit be issued subject to compliance with the violated interim date within a short period of time set by you and with each of the remaining interim dates.

20. Hold application in abeyance. Devise (in cooperation with the certifying agency if possible) a new schedule permitting compliance with terminal date of the implementation plan. Immediately notify applicant in writing that he must certify he is in compliance with the violated interim date within a short period of time set by you. If you receive the certification within the deadline set by you, recommend to the District Engineer that the permit be issued subject to compliance with each remaining interim date in your revised schedule. Make such recommendation even if applicant is unlikely to meet his terminal date. If the certification does not arrive within the period of time set by you, recommend to the District Engineer that the permit

be denied. Then refer the application to your Regional enforcement staff.

21. Refer the application to your Regional enforcement staff. No notification of Permit Program Headquarters is necessary even if your action conflicts with a State grant of certification or a State comment favoring issuance of the permit.

22. Recommend to the District Engineer that the permit be issued with a duration equal to the time remaining before the terminal date (not to exceed five years), along with any other conditions you deem necessary.

23. Same as No. 22 above except that, in addition to any other conditions you impose, impose a condition that construction begin within three to four months unless weather conditions require a longer wait.

24. Same as No. 22 above, except that, in addition to any other conditions you impose, impose conditions that the applicant certify within six months that his final plans have been approved and that he certify within nine to twelve months that he has begun construction of any facilities necessary to reach the required level or treatment or control.

25. Same as No. 22 above, except that, in addition to any other conditions you impose, impose conditions that the applicant certify within three months that he has submitted preliminary plans for approval, that he certify within nine months that his final plans have been approved and that he certify within twelve to fifteen months that he has begun construction of the facilities necessary to reach the required level of treatment or control.

26. In consultation with the State certifying agency, devise a set of interim dates to be imposed as special conditions of the permit. Where many applicants have the same terminal date, work out with the State a standard boilerplate special condition schedule of interim dates to be inserted in the permits of those applicants having the same terminal date. Recommend to the District Engineer that the permit be issued subject to compliance with each interim date you and the State impose and any other conditions you deem necessary.

27. Suspend processing of the application. Immediately notify applicant in writing that he has three months to certify to you that his facility is completed and operating up to the required level of treatment or control. If you receive the certification from the applicant within the three month period, recommend to the District Engineer that the permit be issued subject to whatever conditions you deem necessary. If the certification does not arrive within the three month period, recommend to the District Engineer that the permit be denied. Then refer the application to your regional enforcement staff.

28. Immediately notify applicant in writing that he must certify to you every three months his progress in completing his treatment facilities and that he has one year to certify that his facilities are completed and operating up to the required level of treatment or control. Refer the application to your regional enforcement staff. No notification of Permit Program Headquarters is necessary even if your action conflicts with a State grant of certification or a State comment favoring issuance of the permit.

Chapter 700

Forms

701 Application Form and Instruction Book

August 1, 1971

701-1

702 Permit Form with General Conditions

The following pages contain the revised permit form.

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS

CHAPTER II - CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 209 - ADMINISTRATIVE PROCEDURE

Permits for Discharges or Deposits into Navigable Waters

On March 23, 1971 notice was published in the FEDERAL REGISTER (36 F.R. 5431) that a draft permit was being considered for use in the permit program being instituted pursuant to 33 U.S.C. 407 and Executive Order 11574 (35 F.R. 19627)

On April 7, 1971, regulations were published as Section 209.131 in the FEDERAL REGISTER (36 F.R. 6564) relating to the policy, practice and procedure in connection with applications for permits authorizing discharges or deposits into navigable waters of the United States or into any tributary from which discharged matter shall float or be washed into a navigable water (33 U.S.C. 407).

Pursuant to the notice of March 23, 1971, a number of comments have been received from interested persons, and due consideration has been given to all relevant matters presented. In light of the preceding, a number of revisions have been made in the permit form. The permit form is included in paragraph (o) of Section 209.131 effective on publication in the FEDERAL REGISTER, as follows:

209.131 Permits for Discharges or Deposits into Navigable Waters.

* * * * * * * * * * * * * *

(o) Permit Form. (1) The permit form (ENG FORM 4343, July 1971) is as follows:

Application Number --- --- _____ ------

Acronym name of applicant _____

Effective Date _____

Expiration Date _____

DEPARTMENT OF THE ARMY

PERMIT

Referring to application number _____ _____ dated _____ for a permit to discharge or work in navigable waters or their tributaries, upon the recommendation of the Chief of Engineers, and under the provisions of Sections 10 and 13 of the Act of Congress approved March 3, 1899 (33 U.S.C. 403 and 407), entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," _____

_____

_____

(Here insert the full name and address of the permittee)

is hereby authorized by the Secretary of the Army to discharge, deposit or work in navigable waters and their tributaries under conditions in the manner and in accordance with General Conditions I(a) through (o) and the Special Conditions II(a) through ( ) hereinafter set forth;

in

(Here name the specific body of water and locate the discharge or deposit by either (a) naming the nearest well known locality - preferably a city or town - and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by point of compass; (b) stating coordinates showing longitude and latitude; or (c) stating the state, county, township, range and section in which the discharge or deposit is located.)

as shown on the plat attached hereto subject to the following:

I. General Conditions:

(a) That all discharges or deposits shall be consistent with the terms and conditions of this permit; the discharge or deposit of any material or substance not specifically identified and authorized herein

or the discharge or deposit of any material or substance more frequently than or at a level in excess of that identified and authorized herein shall constitute a violation of the terms and conditions of this permit; a violation of any of the terms and conditions of this permit may result in the modification, suspension or revocation of this permit in whole or in part; any violation of the terms and conditions of this permit shall be unlawful and may result in the institution of such legal proceedings as the Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

(b) That, except as provided in General Condition I(c) below, the discharge or deposit authorized by this permit shall at all times be consistent with applicable water quality standards (including, but not limited to, applicable water quality criteria, implementation plans, water use classifications, and statements of antidegradation adopted in connection with water quality standards or abatement proceedings) whether established pursuant to Section 10(c) of the Federal Water Pollution Control Act, as amended, or pursuant to State law. In the event that two or more sets of such standards (including, but not limited to, conflicting water quality criteria contained in two or more water use classifications pertaining to the same receiving waters) are applicable to the discharge or deposit, the discharge or deposit must be consistent with the more stringent standard.

(c) That if applicable water quality standards are revised or modified during the term of this permit, the discharge or deposit authorized by this permit shall, within six months of the effective date of any revision or modification of water quality standards or as directed by an implementation plan contained in such revised or modified standards or within such longer period of time as the District Engineer, in consultation with the Regional Representative of the Environmental Protection Agency, may determine to be reasonable under the circumstances, be given additional treatment or shall otherwise be modified, if necessary, to be consistent with such revised or modified water quality standards.

(d) That the permittee shall promptly comply with any lawful regulations, orders or other directives affecting the discharge or deposit authorized herein which may be issued by the Administrator of the Environmental Protection Agency and with the recommendations of any enforcement conference held pursuant to the Federal Water Pollution Control Act, as amended.

(e) That the permittee, shall permit authorized representatives and designees of the U.S. Army Corps of Engineers and the Environmental Protection Agency to visit such plants or facilities as may be related

to the discharge or deposit authorized by this permit for the purpose of inspecting discharge or deposit records and monitoring, sampling and related equipment; taking samples of discharges or deposits; or conducting such other on-site inspection as they may deem necessary to monitor compliance with the terms and conditions of this permit. Such visits as are contemplated by this provision shall be at reasonable times and within reasonable limits and shall follow the presentation of appropriate credentials to the owner, operator or agent in charge of the plants or facilities. If a sample is taken, the representative making the inspection shall, upon completion of the inspection and before leaving the premises, give to the owner, operator or agent in charge a receipt describing the sample obtained and, upon request, a representative portion of the sample taken. The permittee shall provide such reasonable assistance as may be necessary to effectively and safely conduct such sampling or inspection.

(f) That the permittee shall maintain detailed records as to the nature and frequency of all discharges or deposits from the plant or other facility identified herein and as to such other information as may be reasonably required by the District Engineer in consultation with the Regional Representative. The permittee shall provide the District Engineer and the Regional Representative with periodic reports concerning such discharges or deposits and such other information required to be maintained. Such reports shall be provided periodically at such intervals determined by the District Engineer, in consultation with the Regional Representative, to be reasonably necessary. Such records and periodic reports shall contain such information and shall be in such form as may be determined by the District Engineer in consultation with the permittee and the Regional Representative.

(g) That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked in whole or in part, and/or the Government may institute appropriate legal proceedings.

(h) That (1) this permit, (2) water quality certification pursuant to Section 21(b) of the Federal Water Pollution Control Act, as amended, (3) the comments of all governmental agencies on a permit application, and (4) all information and data identifying the nature and frequency of a discharge or deposit submitted by the permittee in connection with his application, furnished by the permittee in connection with required periodic reports, or obtained in a plant visit or inspection pursuant to General Condition I(e) above, shall be available to the public without

restriction. All other information and data obtained by the means indicated above shall also be available to the public, unless the applicant or permittee specifically identifies and is able to demonstrate to the satisfaction of the Secretary of the Army or his authorized representative that the disclosure of such information or data to the general public would divulge confidential commercial or financial information or methods or processes entitled to protection as trade secrets.

(i) That the Federal Government shall not be precluded by the issuance of this permit from imposing in the future such taxes or other charges relating to the discharge or deposit authorized herein as may be authorized or required by Federal law or regulation.

(j) That this instrument does not convey any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State or local laws or regulations, nor does it obviate the necessity of obtaining whatever State or local assent may be required by law for the discharge or deposit authorized herein.

(k) That unless specifically provided herein, this permit does not authorize or approve the construction of physical structures or facilities or the undertaking of any work in any navigable waters of the United States or tributaries thereof.

(l) That this permit may not be transferred to a third party without prior written notice to the District Engineer either by the transferee's written agreement to comply with all terms and conditions of this permit or by subscribing to this permit in the space provided hereinafter for the transferee's agreement to comply with the terms and conditions of this permit.

(m) That this permit may be summarily modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative in the Office of the Secretary of the Army, after consultation with the Administrator of the Environmental Protection Agency or his authorized representative and, where practicable, with the permittee, determines that the discharge or deposit authorized by

this permit may pose an imminent hazard to public health or safety. Such modification, suspension or revocation shall be effective upon receipt by the permittee of a written notice specifically indicating (1) the nature of the imminent hazard to public health or safety, (2) the factual considerations leading to the action taken by the Secretary of the Army or his authorized representative in the Office of the Secretary of the Army and (3) the measures the permittee shall take to abate the imminent hazard to public health or safety. The permittee shall take immediate steps to comply with directives contained in the notice received. Following receipt of the notice and after complying with its terms, the permittee may submit to the Secretary of the Army or his authorized representative a request for a public hearing at which the permittee and various other persons shall be afforded an opportunity to present oral and written evidence on the basis for the modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to affirm, rescind or modify the action previously taken shall be governed by the regulation of the Chief of Engineers concerning these matters.

(n) That this permit may be modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit. Any such modification, suspension or revocation shall become effective 30 days after receipt by the permittee of written notice of the facts or conduct warranting such action issued by the Secretary of the Army or his authorized representative with the approval of the Office of the Secretary of the Army, unless (1) within the 30-day period the permittee is able to demonstrate to the satisfaction of the Secretary of the Army or his authorized representative either that (a) the alleged violation of the terms or conditions of this permit did not, in fact, occur or (b) the alleged violation was accidental and the permittee has been operating in compliance with the terms and conditions of this permit and provides assurances satisfactory to the Secretary of the Army or his authorized representative that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within 10 days after denial of the relief authorized in clause (1) hereof, or within the aforesaid 30-day period, if relief under clause (1) hereof is not sought by the permittee, the permittee requests the holding of a public hearing at which the permittee and various other persons shall be afforded an opportunity to present oral and written evidence on the basis for modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be governed by the regulation of the Chief of Engineers concerning these matters.

(o) That any modification, suspension or revocation of this permit shall not be the basis for any claim for damages against the United States.

II. Special Conditions:

.(Here list conditions relating specifically to the discharge, deposit or work, if any, which are authorized by this permit. Such conditions may include, but are not limited to, the following matters: (a) limitations imposed upon the discharge or deposit authorized by this permit such as chemical content, water temperature differentials, oil, hazardous or toxic substances, sewage, type and quantity of solids, and amount and frequency of discharge; (b) interim dates and requirements for treatment or control to be applied to the discharge or deposit authorized by this permit with which the permittee must comply during the duration of this permit; (c) monitoring, recording and reporting requirements with respect to the discharge or deposit authorized by this permit; (d) citation of applicable water quality standards; (e) if the discharge or deposit authorized by this permit will include solids of any type, the permittee shall assume responsibility for the periodic removal of such solids by dredging or agree to reimburse the United States for costs associated with such dredging; (f) plans and drawings attached, if any; and (g) other special conditions.)

This permit shall become effective on the date of the District Engineer's signature and shall expire _____ years from the date of the District Engineer's signature. This permit shall not become valid, however, until the permittee has acknowledged his agreement to comply with the terms and conditions hereof by subscribing below.

Permittee hereby agrees to comply with the terms and conditions of this permit.

_____

PERMITTEE DATE

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

_____

DISTRICT ENGINEER DATE

Transferee hereby agrees to comply with the terms and conditions of this permit.

TRANSFEREE DATE

ENG FORM 4343
July 1971

* * * * * * * * * * * * * * *

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Dated: 21 July 1971

F. P. KOISCH
Major General, USA
Director of Civil Works

SAMPLE LETTER REQUESTING CERTIFICATION

Dear_____:

The enclosed permit application by (Applicant, address, and application number) has been received from the U. S. Army, Corps of Engineers.

In accordance with Section 21(b) of the Federal Water Pollution Control Act you are requested to provide certification that the proposed activity will not result in violation of applicable water quality standards, or, if appropriate, to deny certification because the activity would violate the standards. The permit will not be issued if certification in denied.

Please include in you certification:

a) Name and address of the applicant

b) Statement that you have either (1) examined the application (specifically identifying the number or code on the application) and base your certification upon an evaluation of the information contained in the application which is relevant to water quality considerations or (2) examined other information furnished by the applicant sufficient to permit you to state that there is reasonable assurance that water quality standards will not be violated.

c) A statement that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards.

d) Statement of any conditions which you deem necessary or desirable with respect to the discharge.

e) Any other information you consider to be appropriate.

No license or permit will be granted until the certification has been obtained or waived. The Corps of Engineers has requested certification within six months; please send your comments or a statement of waiver to the appropriate District Engineer of the Corps of Engineers.

Sincerely yours,

SAMPLE LETTER REQUESTING WRITTEN COMMUNICATION

Dear_____:

The enclosed permit application (applicant, address and application number) has been received from the U. S. Army, Corps of Engineers.

In accordance with the Corps of Engineers regulations on Permits for Discharges or Deposits into Navigable Waters (title 33, part 209), written communication from the State is required before an application will be fully processed.

Please include in your response:

a) A description of the impact of the proposed discharge or deposit and,

b) The views of the State on the desirability of granting a permit.

The Corps of Engineers has requested your comments or a statement of waiver be sent to the appropriate District Engineer of the Corps of Engineers, within six months.

Sincerely yours,

Sample letter on Downstream Effect

to affected state

Dear_____:

The (State or Interstate Agency) has certified that there is reasonable assurance that the activity proposed to be conducted by (Applicant and Address) at (Location) under a permit applied for from the U.S. Army Corps of Engineers will be conducted in a manner which will not violate water quality standards. This certification is required by Section 21 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.)

The Environmental Protection Agency has determined that the discharge from the above activity may affect the quality of the waters of your State. Consequently you have sixty (60) days from receipt of this letter to determine whether this discharge will affect the quality of your waters so as to violate your water quality standards. If you do so determine, and so notify the U.S. Army Corps of Engineers, and the Environmental Protection Agency at the above address, in writing, within the sixty (60) day period; and if you so request it, the U.S. Army Corps of Engineers must hold a public hearing on the question of issuing this permit. If, after the public hearing, the imposition of conditions cannot insure compliance with water quality standards, the U.S. Army Corps of Engineers cannot issue the permit.

Sincerely yours,

Regional Director

704 "A Program for Clean Waters"

A question and answer booklet follows.

705 Uses of the Permit Application Transmittal Form

705 USES OF THE PERMIT APPLICATION TRANSMITTAL FORM (PATF)

A. Transmittal of Applications or Information between CE and EPA Offices

See "User Instructions" accompanying the form.

B. Input of Data into the Management Information and Control System (MICS)

1. General Requirements

Only the EPA half of the form is used for this purpose--original copy when information is received from CE, Xerox copy for information sent to CE, and a blank original for other entries, i.e., transactions not involving CE.

The numeric codes immediately to the right of the check boxes, e.g., 01/01, represent the action/event designations for the MICS. They are followed by blanks for the date of completion of the event which is also entered into the MICS. Only items with a check in the box and a numeric code after the box are to be entered into the MICS. Items showing no codes after the check box are not required in the MICS.

Items with the numeric codes of 01/05, 02/06 and 02/05 contain further subdivisions preceded by a check box which is followed by a letter code. One of these subdivisions should be checked when a transaction involves any one of these three items and the letter code must be entered into the MICS in accordance with the input format instructions. The fourth item with subdivisions, 04/01, presents a special case and is discussed below.

In addition to the numeric codes and completion (transaction) dates, some items contain space for additional entries, e.g., an important (but non-control) date or time span in items 03/01 and 01/04, respectively. These are to be entered in the space allocated for "Remarks" in the MICS input format. For item 02/05, both the date and time span (in years) should be entered in the "Remarks" space for MICS input. Since "Remarks" represents an unedited alphanumeric field, the date and years figures should be separated by a semicolon and all dates entered under "Remarks" should be separated by hyphens or blanks, e.g., 10-12-71, for a more readable report format.

Special case: item 04/01 contains three subdivisions in which the check boxes are followed by a numeric code. The

checked subdivision item is to be treated as an independent event for MICS entry, and entered separately in addition to item 04/01. The date to be shown with this supplementary entry should be the date for which the hearing is set and is to be taken from the second date entry for the main item, i.e., "Notice of hearing on __ __ __ due to".

2. Manual Entries

Some manual preparation of the PATF may be required prior to submission for direct computer input. This would vary depending on the source of information to be entered into the MICS. In all cases, the form should be filled out in accordance with "User Instructions."

Information received from CE would have to be transferred from the CE half to the EPA side of the form, since the codes are different for the two systems. Also, the date of receipt in the EPA office would have to be entered in the allocated space.

Information sent to CE would be entered on the form prior to the transmittal, and the Xerox copy can be used for direct computer input.

Actions/events not involving CE but part of the MICS can be entered using the "Other" item at the bottom of the form. In addition to Region and Application Number entries, and checking the box to signal an input item, the numeric action/event code should be entered after the box, followed by the date of the event. A narrative description of the event can be entered in the space provided, 15 characters of which could be entered into the "Remarks" space in MICS format.

C. As a processing History Record of a Permit Application

In this case, a copy of the form would be retained at the office handling the particular application. All actions pertaining to the application would be recorded on this form. Instead of a check mark, a number would be entered in, or beside, the appropriate box to show the order in which actions were taken or events occurred (e.g., 1 for receipt of application with certification, 2 for a clarification of data request, 3 for a public hearing, etc.), along with the relevant dates. This use is completely optional, being suggested by the design of the form, and does not constitute its main purpose. It would merely provide a quick, at-a-glance, record of the highlights in the processing of a single application.

PROCESSING OF PATF ITEMS

Legend: A = Attachment; I = Incoming;
O = Outgoing; L = letter, notice or form.

P = Processing; M = MICS Entry;
X = Fill out and Xerox PATF; T = transfer data from CE half of form to EPA side; IDR = Initial Data Review

1. 01/01 Appln. received w/o certification.

   A: I - Application.

   P: T; M; Control card to info. file; copies of appln. to state and IDR (Implementation and other coding; central keypunching). Use procedure set up with individual state or other certifying agency for obtaining certification. Compare against original appln. if revision submitted by applicant; omit control card.

2. 01/02 Appln. received with certification.

   A: I - Appln. and certificate.

   P: T; M; Control card to info. file; copies of appln. to state and IDR (implementation and other coding; central keypunch). Compare against original appln. if revision submitted by applicant; omit control card.

3. Referral notice (for certification) received.

   A: I - L or none.

   P: T.

4. 01/03 Additional or clarification of data required.

   A: O - Copy of request form/letter.

   P: X; M; Send request with appln. page(s) and instructions directly to applicant.

5. Additional (requested) data received.

A: I - data

P: T; Copy to IDR (review; regional or central keypunch).

6. 03/01 Certification received.

A: I - Official copy of certificate(from applicant through CE).

P: T; M (date of cert. into "Remarks"); Regional recommendation.

7. 03/02 Letter of compliance received.

A: I - letter of compliance (official copy).

P: T; M (date of letter into "Remarks"); Regional recommendation.

8. 03/04 Certification waived by state.

A: I - Certification waiver notice (official).

P: T; M; Regional recommendation.

9. 03/03 Permit rejected by state.

A: I - L.

P: T; M (date of rejection into "Remarks"); Terminal action.

10. 01/10 Application complete.

A: O - L or none. (Notice received through IDR).

P: X; M.

11. 04/01 Notice of public hearing.

A: I - L.

P: T; M (Double entry; hearing date ("on __ __ __") becomes control date for reason for hearing ("due to") entry which is checked); prepare comments on hearing.

12. 04/05 Public hearing comments.

A: O - L.

P: X; M.

13. 02/01 Interstate (downstream) effect notice.

A: O - L.

P: X; M.

14. 02/03 Notice of waiver by other state.

A: I - L.

P: T; M (date of notice into "Remarks")

15. 05/01 Environmental Impact Statement (EIS) received.

A: I - EIS.

P: T; M; response preparation.

16. 05/02 EIS response.

A: O - L.

P: X; M.

17. EIS not required.

A: I - L or none.

P: T.

18. 01/04 Request for extension.

A: O - L.

P: X; M (length of extension into "Remarks")

19. 01/05 Recommendation on application.

A: O - L.

P: X; M (check and enter letter code for type of recommendation).

20. 02/04 Notice of referral to higher authority.

A: I - L.

P: T; M.

21. 02/07 Notice of prosecution.

A: I - L.

P: T; M.

22. 02/06 Notice of permit rejection.

A: I - L.

P: T; M (enter letter code for reason for rejection). Terminal action.

23. 02/05 Notice of permit validation.

A: I - L.

P: T; M (date and duration into "Remarks"; enter letter code designating type). Terminal action.

24. Other.

Can be used for non-standard or temporary transactions, e.g., receipt of Part B of the application form prior to October 1, 1971.

PERMIT APPLICATION TRANSMITTAL FORM

TO: FROM:

CORPS OF ENGINEERS

Appln. No. _____

	Code	Date Sent/Recd.	Action/Event
☐	03/01	__ __ __	Appln. w/o certif. sent to EPA
			__ Revision
☐	03/02	__ __ __	Appln. w. certif. sent to EPA
			__ Revision
☐	02/01	__ __ __	Appln. referred to certifying agency
☐		__ __ __	Additional data request received
☐		__ __ __	Additional data forwarded
☐	02/03	__ __ __	State certification issued on__ __ __
☐	02/04	__ __ __	Letter of compliance received on__ __ __
☐	02/05	__ __ __	Certification waived
☐	03/06	__ __ __	Permit denied due to state disapproval on__ __ __
☐		__ __ __	Received notice of complete appln.
☐	03/03	__ __ __	Public hearing on __ __ __ due to
			__ Public reaction __ Interstate request __ CE request
☐		__ __ __	Hearing comments recd. from EPA
☐		__ __ __	Interstate effect notice received
☐		__ __ __	Comments by other state waived on__ __ __
☐	05/05	__ __ __	Forward EIS
☐	05/04	__ __ __	EIS response received
☐	05/06	__ __ __	EIS not required
☐	03/07	__ __ __	EPA request for time extension for ___ days received
☐		__ __ __	Recommendation on application recd.
			__ Interim permit __ Regular permit __ Deny permit __ Refer for enforcement action
☐	04/07	__ __ __	Appln. referred to higher authority
☐		__ __ __	Appln. sent to Department of Justice
☐	04/08	__ __ __	Application disapproved due to
			__ Water Quality __ Fish and Wildlife __ Navigation and Anchorage
☐	04/09	__ __ __	Permit validated on__ __ __ for ___ yrs.
			__ Regular permit __ Interim permit (exp.2 Apr 73)
☐		__ __ __	Other (specify)

_____

Remarks:

112<

ENVIRONMENTAL PROTECTION AGENCY

Region ___ Appln. No. _____

	Code	Date Sent/Recd.	Action/Event
☐	01/01	__ __ __	Appln. w/o certif. received
			__ Revision
☐	01/02	__ __ __	Appln. w. certif. received
			__ Revision
☐		__ __ __	Referral notice received
☐	01/03	__ __ __	Additnl./clarificatn. of data reqd.
		__ __ __	Additional data received
☐	03/01	__ __ __	Certification received dated__ __ __
☐	03/02	__ __ __	Letter of compliance received dated__ __ __
☐	03/04	__ __ __	Certification waiver notice
☐	03/03	__ __ __	Permit rejected by state on__ __ __
☐	01/10	__ __ __	Application complete
☐	04/01	__ __ __	Notice of hearing on__ __ __ due to
			☐ 04/04 Public reaction ☐ 04/02 Interstate request ☐ 04/03 CE request
☐	04/05	__ __ __	Public hearing comments
☐	02/01	__ __ __	Interstate effect notice
☐	02/03	__ __ __	Notice of waiver by other state on__ __ __
☐	05/01	__ __ __	EIS received
☐	05/02	__ __ __	EIS response
☐		__ __ __	EIS not required
☐	01/04	__ __ __	Request extension for ___ days
☐	01/05	__ __ __	Recommendation on application
			☐ I Interim permit ☐ R Regular permit ☐ D Deny permit ☐ E Refer for enforcement action
☐	02/04	__ __ __	Notice of referral received
☐	02/07	__ __ __	Prosecution notice received
☐	02/06	__ __ __	Notice of rejection due to
			☐ W Water Quality ☐ F Fish and Wildlife ☐ N Navigation and Anchorage
☐	02/05	__ __ __	Notice of permit validation on__ __ __ for ___ yrs.
			☐ R Regular permit ☐ I Interim permit (exp. 2 Apr 73)
☐		__ __ __	Other (specify)

_____

Remarks:

August 1, 1971
705-7

USER INSTRUCTIONS

SENDING OFFICE

Use the sender's half of the form only.

1. Enter address of receiving office (TO) and sending office (FROM).
2. Enter number of application. EPA offices must also enter their Region number.
3. Check the box to indicate the reason for the transmittal.
4. Enter date of the transmittal in the blanks beside the box checked in the "Date Sent/Recd." column.
5. Check or write in other information which may be required for the given transmittal in the blanks provided in the "Action/Event" column (e.g., date of and reason for holding a public hearing--Item 03/03 on the CE half of the form).
6. Use the item at the bottom of the form ("Other") for non-standard transmittals (e.g., forwarding of Part B prior to October 1, 1971), and specify the nature of the transmittal in the blank space provided.
7. Attach the completed form to the material being transmitted, using a separate transmittal form for every individual application.
8. Retain a Xerox copy of the completed transmittal form for entering the transaction data into the Management Control System.

RECEIVING OFFICE

Use the receiver's half of the form only.

1. Enter the application number at the top of the form. EPA offices should also enter their Region number.
2. Check the appropriate box indicating the reason for the transmittal.
3. Enter the date of receipt of the application or information.
4. Transfer other information given on the sender's half of the form to the receiver's side.
5. Use the completed receiver's half of the form for inputting the information into the Management Control System as necessary. (EPA offices only).

Chapter 800

Index and Glossary

Chapter 900

Appendices

903 Memorandum of Understanding -- Implementation

904 Memorandum of Understanding -- Enforcement

905 Department of Justice Guidelines

Draft Guidelines for Litigation Under the Refuse Act Permit Program

In view of (a) the signing by the President of the attached Executive Order 11574 which establishes a permit program under the Refuse Act to regulate the discharges of pollutants and other refuse matter into the navigable waters of the United States or their tributaries (b) the signing of the attached Memorandum of Understanding between the Corps of Engineers and the Environmental Protection Agency with respect to the enforcement of the Refuse Act, and (c) the consolidation within the Land and Natural Resources Division pursuant to the attached order of criminal as well as civil responsibility for the administration of the Refuse Act, the guidelines for Litigation Under the Refuse Act transmitted to the United States Attorneys on June 13, 1970 are hereby withdrawn and the following procedures are to be adhered to by all United States Attorneys:

1. United States Attorneys are authorized to initiate any action, either civil or criminal, referred to them for litigation by the District Engineer of the Corps of Engineers or the Regional Representative of the Environmental Protection Agency, pursuant to their Memorandum of Understanding.

2. All allegations of violations of the Refuse Act submitted to the United States Attorneys from sources other than the District Engineer of the Corps of Engineers or the Regional Representative of the Environmental Protection Agency shall be referred to the District Engineer of the Corps of Engineers and the Regional Representative of the Environmental Protection Agency for investigation and recommendations,

August 1, 1971
905-1

GPO 909.758